



# INDIAN LAW REPORTS

## Allahabad Series

CONTAINING CASES DECIDED BY THE HIGH COURT AT ALLAHABAD  
and by the Appellate Court of India on appeal therefrom  
and also the

ACTS AND ORDINANCES OF THE STATE

of

**UTTAR PRADESH**

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of

THE GOVERNMENT OF INDIA

THE LAW DEPARTMENT

Delhi

THE GOVERNMENT OF UTTAR PRADESH

Allahabad

THE GOVERNMENT OF INDIA

1

1954

Volume III

JULY-DECEMBER

# JUDGES OF THE HIGH COURT OF JUDICATURE AT MADRAS

1854

*Chief Justice*

The Hon<sup>ble</sup> Baron de Saxe Meis

*Judges*

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The Hon<sup>ble</sup> Mr. Justice Knighton Taylor

The Hon<sup>ble</sup> Mr. Justice Monro, Hume, Kinnear

The Hon<sup>ble</sup> Mr. Justice Curran, Ellis, Arundell

The Hon<sup>ble</sup> Mr. Justice M. C. Davis

The Hon<sup>ble</sup> Mr. Justice Vaughan Williams

The Hon<sup>ble</sup> Mr. Justice Pitt Rivers, Lord

The Hon<sup>ble</sup> Mr. Justice Ross, Jones, Green

The Hon<sup>ble</sup> Mr. Justice Scott, Lister, Bell

The Hon<sup>ble</sup> Mr. Justice Browne, Morgan

The Hon<sup>ble</sup> Mr. Justice Miles, Lee, Chatterjee

The Hon<sup>ble</sup> Mr. Justice Hall, Stevens, Chatterjee

The Hon<sup>ble</sup> Mr. Justice Brown, Scott

The Hon<sup>ble</sup> Mr. Justice Harrison, Brown, Adams

The Hon<sup>ble</sup> Mr. Justice D. N. Bell

The Hon<sup>ble</sup> Mr. Justice Cooper, Williams

The Hon<sup>ble</sup> Mr. Justice B. R. Jones

The Hon<sup>ble</sup> Mr. Justice Ayres, Smith, Meis

The Hon<sup>ble</sup> Mr. Justice R. B. Chatterjee

The Hon<sup>ble</sup> Mr. Justice Sir N. S. Jones

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1854

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## ERRATA

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At Page 464—Read *Full Bench (Criminal Miscellaneous)* instead of FULL BENCH (APPELLATE CIVIL) in the Head Notes

At page 500—Read *Full Bench (Criminal Miscellaneous)* instead of FULL BENCH (APPELLATE CIVIL) in the Head Notes

At page 653—Read *Criminal Miscellaneous* instead of CIVIL MISCELLANEOUS in the Head Notes, and *Criminal Miscellaneous* instead of 'CIVIL MISCELLANEOUS' in the description of the nature of the case, in the Head Notes



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THE  
**INDIAN LAW REPORTS**  
—  
**ALLAHABAD SERIES**  
—

CIVIL REVISION

*Before Mr. Justice Das*

CHIEF INSPECTOR OF FACTORIES, U. P.  
(Applicant)

v.

V. K. MODI (Respondent Factory)

1951  
F. 125  
12

**Payment of Wages Act, 1946, s. 15—16—Delay in payment of wages—Wages paid before application by Inspector of Factories—Machinery running order compensation—Total sum in dispute about Rs 100—Appeal is competent**

Under s. 15 of the Payment of Wages Act a magistrate cannot order compensation to be paid by an employer prior to the wages being paid before making an application to the Chief Inspector of Factories.

In order to make an order of a magnitude applicable under s. 17 of the said Act, all that is necessary is that the total sum ordered to be paid should exceed Rs 500. It may be composed of wages alone or of compensation alone or of wages and compensation both.

(*Chowhan Lal v. Junior Inspector of Factories (I) Allahabad*)

Civil Revision no. 183 of 1950 from an order of H. P. Khosla, District Judge of Banarus (as he then was) dated the 17th September 1951.

Standing Counsel Jagdish Sengupta for the applicant.

(1) T. S. B. (1950) Ban. 446

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and  
from  
any  
information  
or fact  
known to  
T. K. Hill

DECEMBER 7. — This is an application by the Chief Inspector of Fisheries for reasons of an order passed by the District Judge on a case under the Prisoners of Wages Act. In this case it is contended that the wages of employees were to be paid by the opposite party before the 10th of the month. Actually they were paid after the 10th of the month but before an application was made to the Chief Inspector under section 15 of the Prisoners of Wages Act. Consequently on the application of the Chief Inspector under section 15 the Magistrate ordered compensation to be paid by the opposite party and the amount ordered exceeded Rs 500. The opposite party went up on appeal and the learned District Judge held that the Magistrate had no jurisdiction to order compensation when the wages of the workmen had already been paid before the application was made. He so made the order of the Magistrate.

The view taken by the learned District Judge, that when the wages had been paid before the Chief Inspector made the application the Magistrate could not order compensation to be paid by the opposite party is correct. An application under section 15 has to be made before the delayed wages are paid. This view surely follows from the direction that can be made by the Magistrate. The principal direction that has to be made is that the delayed wages should be paid. The payment of compensation is an ancillary direction. If the wages have been paid (even though after the due date) it is impossible for the Magistrate to direct payment of the delayed wages and if he cannot make that direction it follows that he cannot make any direction about the payment of compensation. The language of section 15 makes it clear that an order of payment

of compensation alone is beyond the jurisdiction of a magistrate. If compensation can be ordered to be paid, it can be ordered to be paid only along with the wages. If no wages are ordered to be paid, no compensation also can be ordered to be paid.

It is contended in this application that the learned Division Judge had no jurisdiction to exercise the appeal if the Magistrate had no jurisdiction to pass the order of compensation. The Magistrate purposed to act under section 15. The amount of compensation ordered is less than \$5.00. Under section 17 an appeal lies if the total sum directed to be paid by way of wages and compensation exceeds \$5.00. In this case the total sum directed to be paid exceeds \$5.00 though it was composed entirely of compensation. But there is nothing in section 17 to suggest that before an order can be appealable, both wages and compensation should be ordered to be paid. All that is necessary is that the total sum ordered to be paid should exceed \$5.00. It can be composed of wages alone or of wages and compensation both. A magistrate is not bound to award compensation even when he directs payment of deferred wages, nor has discretion not to order any compensation while directing payment of deferred wages. Just as the amount ordered in order to make the order appealable may consist entirely of wages so also it may consist entirely of compensation for the purposes of section 17. That such an order is illegal is besides the question. There is nothing in *Chaveste* *Det. v. James Inspector of Prisoners* (1) which conflicts with the view taken above. *Reynolds*, J. laid down in that case that a magistrate cannot award compensation if the deferred wages have already been paid before the order. In that case the deferred wages had been paid before the order was made by the Magistrate and the

202  
 Case  
 brought  
 on for  
 appeal O. P.  
 4. Is there  
 ground?

*in* Magistrate ordered compensation of less than Rs 300.  
*Case* Still there was an appeal by the employee who contended  
*between* that the amount of the wages that had been delayed  
*in Rs 300* in payment and the amount of compensation taken  
*together* exceeded Rs 300 and thus consequently  
*he had* he had a right of appeal. That contention was over-  
*ruled* ruled. That case is distinguishable from the present  
*case* case where the amount of compensation itself exceeded  
*Rs 300* Rs 300. Therein, I relied upon the fact that the  
*compensation* compensation provided in that case did not exceed  
*Rs 300* Rs 300. I therefore held that the appeal was com-  
*pulsory* pulsory and that the learned District Judge did not act  
*without* without jurisdiction in entertaining it.

There is no force in that application as stated and it is dismissed.

*Reviewed and noted*

# CIVIL MISCELLANEOUS

*Before the Honourable B. Muhl, Chief Justice and  
 M. Justice Shargay*

P STANWELL AND COMPANY (Applicants),

*vs.*  
 JAMES PAUL TAX AGENTS (Respondents).

## THE COMMISSIONER OF INCOME TAX (OPPOSITE PARTY)

*James Pauls Tax Agt' 1949, s. 234—Partnership firm work-  
 ing efficiently as such—One of the partners a qualified  
 engineer—Firm's profits—Firm's profits distributed wholly on  
 personal qualifications of partner—Skill and knowledge of  
 partners in every business.*

The income of an old partnership firm and the partners  
 with no connection in the case of R. The partners had acquired  
 considerable experience and one of them was a qualified

business which enabled him to cross on the business more efficiently than when. This secured a lot of Government work and one of the profits of Rs 54,384 the income made by sale of Government properties was Rs 59,585. This had done much better than several other firms of businessmen and the income in this business was not due to war profits alone.

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### Types questions referred.

As to that the income of P depended mainly on the personal qualifications of the partners as contemplated by s. 239 of the Income Tax Act and the Tribunal erred in deciding the point not on the facts of the case but upon the law it held that in India no special qualifications were needed to set up a business.

As to further, does a certain amount of skill and knowledge is required in every business as a profession is as required, to a larger degree though this was not, for the sole criterion for judging whether a particular business is a profession or not. Courts decided.

Miscellaneous Case no. 520 of 1947

The facts appear in the judgment.

c. 5. Petition for the respondent.

Particulars for the opposite party.

The judgment of the Court was delivered by—

MATHUR, J. —This is a reference under section 211 of the Income Tax Act read with section 68(1) of the Indian Income Tax Act. The assessee firm M/s. P. Bhandari & Co. is a partnership firm and the partners, with 4 partners in the city of Kanpur. During the chargeable accounting period 1943-44 the assessee's income from this business amounted to Rs 54,384. The Income Tax Officer considered that income profits tax was leviable on the profits of the business made during the accounting period. The assessee on the other hand challenged their liability on the ground that they were carrying on a profession and the profits depended mainly upon their personal

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qualifications. A suggestion was also made on behalf of the department that the professor carried wholly or mainly in the making of contracts on behalf of other parties. There were then three points raised, first, whether the answer turned on a question second, whether or not even the parties depended mainly on the personal qualifications, and last, whether the professor carried wholly or mainly in the making of contracts on behalf of other parties.

The first and the third points were decided in favour of the answer. The second point was decided against the answer. The answer alone ruled for a reference to the Court.

The answer formulated the question as follows:

Whether in the circumstances of the case the making of contracts concluded by professors did not depend wholly or mainly on the personal qualifications of the persons?

The Tribunal however changed the form of the question and the question referred to us is in these terms:

Whether in the circumstances of the case the success of the applicants derived from their making of contracts, a professor depends wholly or mainly on the personal qualifications of the persons of their firm is contemplated by section 27(1)?

Learned counsel for the answer has urged that the Tribunal in deciding the question whether the success of the answer depended mainly on the personal qualifications of the persons of the answer firm has not based its finding on the facts found by it in its appellate order but has decided the question on the general law not having consideration that in India incorporation is not a profession which required any particular qualification and there being no law requiring a person to take

put a license any other man got. Nobody's got no license.

The relevant portion of section 8(4) of the *Income Tax Act* provides that—

unless there is anything negative in the subject or relation.

business involves any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving of other persons of advice of a commercial nature in connection with the making of contracts on his or their part.

The reason for exempting from payment of Excess Profits Tax the profits made which depend wholly or mainly on the personal qualifications of the person making the profit is obvious. The primary object of the Excess Profits Tax Act was to deal with increased profits made due to war conditions. If however the profits did not depend upon the war conditions but depended mainly on the personal qualifications of the person making it, there was no reason why it should be subjected to Excess Profits Tax.

As we have already said, the Tribunal has held that the burden of a "vacuum-out" is a prohibition. As the question whether the answer was carrying on a prohibition was not referred to us, it is not necessary to go at this length into that question, but it may be pointed





to the result of the political proposals, and not aimed in the case before him more immediately to be realized by propositions that would be as it were advanced that a profession in the present use of language makes the idea of a corporation requiring codes purely intellectual skill or a set manual skill as in printing and tailoring or surgery, shall controlled by the intellectual skill of the operators, a distinguished line in corporation which is characteristically the profession in sole or management for the provision or sale of commodities. The line of demarcation may vary from time to time. The word professions used to be confined to the three learned professions—the Church, Medicine and Law. It has now, I think, a wider meaning.

In *Case 5: Communications of Judicial Review* 1991 116 Lord Steyn said: 'Mr R. pointed out that whether a claim is a question or a problem is not a line not depended upon the circumstances of the case and there might be circumstances in which nobody could raise it at all, since some courts do what the court is doing is a matter of a profession and discipline, looking at the matter from the point of view of a judge directing a jury, the judge would be bound to direct them that on the facts they could only find that he was acting on a profession. That reduced it to a question of law. On the other hand there might be those on which the direction would have to be given the other way. For example, there was evidence there was a very large riot of violence, in which the answer became a question of degree and where that was the case the question was undoubtedly in his opinion one of fact and if the Commissioner came to a conclusion of fact



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 F. HARRISON  
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 G. HARRISON  
 V.  
 THE STATE  
 OF ALABAMA  
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There can therefore be no doubt that an occupation or business is recognized in England as a business requiring personal skill to be carried on by the person who has been engaged for the purpose by his customer and a personal license has to be taken out by every member of the firm of auctioneers before they can work as such. The Tribunal has relied on the fact that in India no license is needed for the work of an auctioneer. It is urged in reply that to place on one of the intelligent quakers of Yorkshire an even hatter's cap is a ridiculous way to be a regulated profession in India and yet it cannot be urged that the work of a Surveyor or Engineer or that of a doctor prescribing homoeopathic is not a profession. Learned counsel has therefore pointed out that the same fact has there is no statutory provision yet setting out the requirements for carrying on the business of an auctioneer does not make it any the less a business requiring skill and knowledge.

The question whether the profits in the case before us mainly depended upon the personal qualifications of the partners of the firm or firm would depend upon the facts and circumstances of the case. The point was argued before the Appellate Tribunal and the circumstances were clear, we are on behalf of the assessee who the assessee claimed that the profits were mainly due to the personal qualifications of the partners. The Privy Council unanimously relied on the fact as even were that the assessee firm was an old firm and the partners though not possessed considerable experience in this line that one of them was a qualified engineer which enabled him to do the work of valuing the property and carrying on the business more efficiently than it could be carried on by any person not a qualified, that by reason of the efficient manner in which they were able to do charge their affairs that had obtained a lot of government work and out of the total profits amounting to

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The facts and circumstances relied on by the Tax Court seem to have been challenged before the Tax Board except that while the taxpayer claimed that the Service had been wrong on its two questions on behalf of the department it was admitted that from the taxpayer's records it is clear it was clear that the firm had been wrong on its second question, its first one. (1925-26)

The National Institute devoted the great sums the country up in the form of the payments can be in the case that a tool, that is to say, no special qualified persons were needed to set oneself up as an architect.

So Joseph Harrop, on behalf of the respondents, has relied on the seventh paragraph of the appellate order of the Tribunal in which the Tribunal held that though in a sense they were exercising a profession but it was not the income of which depended on personal qualifications of an person. This finding was however not recorded as would be apparent from the previous two paragraphs of the appellate order in the facts and circumstances of the particular case but on the reasoning that in India anybody can set himself up as an attorney and the word law person may qualify to be taken as correct on that account.

When the application under section 21 of the Excess Profits Tax Act was heard by the Tribunal an objection was raised on behalf of the Department that the rev. did not bring a question of law but a question of fact, and

the Tribunal took the view that the point raised was a question of law as the point was not decided on the facts of the particular case but on the general view that no special qualifications being required for setting up the business of an auctioneer the income could not stem from the mere fact of their income depended on their personal qualifications.

THE  
INCOME  
AND  
CAPITAL  
GAINS  
TAXES  
ACT, 1922  
SECTION  
104  
20-1-1922

The income of an auctioneer depends mainly on the extent of business that the firm can attract, the price at which it succeeds in selling the goods and the time at which transactions are possible on the sale proceeds. All these are factors requiring or depending on personal skill and, *prima facie*, it is not possible to say that the business of an auctioneer does not require any personal qualifications for its being carried out successfully. It may be that anybody can set up the business, as no restrictions have yet been imposed, but so far as the income tax is concerned, there can be no doubt that the circumstances relied on by them could lead to the conclusion that the main part of their profits depended on the personal qualifications of the partners and the Tribunal erred in rejecting the contention on general grounds. On the facts and circumstances stated by us above, which appear from the appellate order of the Tribunal and the statement of the case, in our view it is possible to come to the conclusion that the income of the assessee depended mainly on the personal qualifications of the partners as contemplated by section 104. That is our answer to the question referred to us.

The assesse is entitled to its costs which we fix at Rs 500.

*Question answered*

## APPELLATE CRIMINAL

Before Mr. Justice Durr and Mr. Justice Agnew.

## PARSHOTLAM

(The  
State vs.

P.

STATE

Indian Penal Code, 1860, s. 40—travel by, and for, one animal  
up to five miles per day on land when full—weight—delivered—  
plundered and sold—delivered—s. 402 applied.

When it is established that P crossed the land route on  
the land route, on the day of P, then P would be free on  
the day with a full, and then of on the full, and a journey  
then on his head to convey that it caused a big distance and  
importance of time, and requires of accident with such a  
traveling and that the work by P was delivered, plundered and  
sold—delivered.

When the sentence of P was not made to him, and  
then on full P, then the proper sentence, and the, and  
sentence of P was s. 402 Indian Penal Code and that the proper  
sentence to be given on P was one of the.

On the day.

General Appeal no. 281 of 1957 from an order of  
H. P. District Sessions Judge of Baramulla, by which  
was dated the 12th July 1957.

The facts appear in the judgment.

P. C. Chatterjee for the appellant.

The Government Advocate (Mr. H. L. Durr) for the  
State.

The judgment of the Court was delivered by—

AGNEW, J. —This is an appeal by Parshtam Ali,  
aged 18 years resident of Salskida, against his conviction  
under Section 402 Indian Penal Code for the murder of  
Mr. Kishore Singh on 1st October 1956 and the

accident at death. There is also before us the will reference to the satisfaction of the sentence of death.

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Sri Raj Kishore Singh was a retired Additional Commissioner of the State. After retirement, he settled down in village Salakha and took to gardening. He used to go from his house every morning to his greenhouse with his son, Sri Satya Kumar Singh. Both of them used to start at about 9.2 in the m and again go to the groves and return at midday for their lunch. The appellant had his fields near the groves of Sri Raj Kishore Singh. There were certain ponds from which he used to water them but a dispute arose in the year 1958 these ponds had not enough water for irrigation purposes. Sri Raj Kishore Singh used to water his groves from another pond nearby. The prosecution claims that as the appellant could not obtain sufficient water from the other ponds he used to divert to his own plot the water of the pond from which Sri Raj Kishore Singh used to water his groves. He could have done this only by diverting the drainage which had been dug by Sri Raj Kishore Singh from the pond to his own groves. Sri Raj Kishore Singh was not agreeable to this and prevented the appellant from carrying out his intention. The appellant appears to have entered this area and took it to heart. He complained about it to several persons but no one would help him. The accident happened on the 5th October 1960. The next day, that is the 6th October 1960 when Sri Raj Kishore Singh was returning from his groves at about midday after having taken his son to the laboratory working in the groves, the appellant armed with a lathi followed Sri Raj Kishore Singh to some distance and when Sri Raj Kishore Singh was half-way on the road of the field of one Mahadeo Lohar gave him a lathi blow on the right leg. On receiving the blow Sri Raj Kishore Singh fell down on the ground

Dr.  
Kishore Singh  
4000  
Agartala 1

and then the applicant gave him a smacking blow on the head resulting in profuse bleeding and in the fracture of the skull bone. Raj Kishore Singh ran and fled the next morning, at about 4 a.m.

The incident is alleged to have been witnessed by Sri Raj Kishore Singh and Smta. Kishore Singh and some other persons who were visiting the hotel at the time it occurred at the time.

The first information report of the incident was lodged by Smta. Kishore Singh on the 8th October 1950 about an hour of the incident. Dr. J. P. Capen, Medical Officer in charge of the Sub-Divisional Dispensary was immediately called. He found that the injury on the head was serious and thought that Sri Raj Kishore Singh who was unconscious might die and ordered that the Civil Surgeon be called. The Civil Surgeon was also called from Bongaon but he could render no help and Sri Raj Kishore Singh expired at about 11 a.m. Dr. J. P. Capen examined the injuries when Sri Raj Kishore Singh was unconscious on the 8th October at 5 p.m. He found that there was a laceration on the outer vertex of the scalp for  $7 \times 2$ " and this extended upward  $12 \times 12$ " up to the base on the left side of the head. It showed the cranium with fracture of the skull bone with symptoms of compression of the brain. The post-mortem examination was held on the 8th October 1950 at Bongaon at about 1.30 p.m. According to the report of the Civil Surgeon there was a gunshot wound on the top of the head, on the left side  $2\frac{1}{2}$ " long  $\times$   $4$ " wide, bone deep with entrance in an area  $12 \times 12$ " and there was bleeding from the wound. He also found a contusion  $12 \times 8$ " on the right leg. Internal examination of the head showed a depressed fracture of the table running from ear to ear  $18$ " long. At the back is enclosed an sketch



with one inch of another 1 and the third 1 all departed. The circumference of the lesion was deeply irregular. The lesion was covered with a blood clot on the right side which was nearly 1" thick. The cause of death according to the doctor was fracture of the left as a result of the compressed spinal cord the fatal result by internal injuries such as laceration.

The appellant denied the commission of the offence.

The prosecution produced some human Singh, Jagesh Kumar, Dasa and Sati Singh as witnesses of the occurrence in support of its case. We have examined their statements and have no reason to disbelieve them. In accordance with the findings of the learned Sessions Judge we are of opinion that the appellant caused the injuries to Sri Raj Kumar Singh which brought about his death as alleged by the prosecution.

The question then is what offence the appellant has committed. It is increasingly urged that the offence committed by the appellant should be considered to be one of causing grievous hurt under section 325 Indian Penal Code. In support of this contention a recent unreported decision of the Supreme Court (*Alwaraj Prasad v. State*) (1) was cited. In our opinion that decision has no application whatever to the facts of the present case. In that case the facts were that three persons suddenly came from behind and punched the deceased with fists while he was walking. The doctors of course have normally taken another route but since he had some particular business on the day of the murder he had taken that particular route. There was no evidence to show that the appellant knew that the deceased was to pass that way. The injuries caused to the deceased were fatal in number including one

(1) Reported in 111 Crim. L.J. 101 (1961) 1 All. 101.

and  
damages  
to  
plaintiff  
against  
defendant

connected wound on the back part of the crown of the head which caused a fracture of the skull and resulted in the death of the decedent. The other injuries were minor and simple in nature. There was no evidence as to which of the accidents had caused the minor injuries. In these circumstances the Supreme Court held that it could not be presumed that the appellants had the common intention of assaulting the decedent but that the presumption could be made that the accident had at least the common intention of causing grievous hurt to the decedent. These findings however were not in dispute. The question is as to what was the common intention of the appellants and depends on the facts of each case and where there is direct or circumstantial evidence to show that the intention of the appellants was to kill the victim a conviction under section 302 of the Penal Code would be justified even in a case like the present. Having regard to the facts of this case, the Court held that the appellants in this case were guilty of causing grievous hurt each under section 304 Indian Penal Code.

The present case differs from the case before the Supreme Court in several respects. In the first place, in the present case it is known who caused the fatal injury on the head which resulted in death. It was the appellants himself who caused it. In the second place the circumstances attending the attack on the decedent suggest that the appellants had the intention to kill the decedent. The accident took its form the refusal of the decedent to allow him to carry water through the channel which had been constructed by the decedent to bring water from the road to his own quarters. And also that the appellants complained about this to other persons and on receiving no help from

there he was seen the next day following the deceased turned with a blow and when the deceased had proceeded to some distance he struck the deceased on the leg and then when the deceased had fallen down on the ground he gave him a very long blow on the head. We have also seen that the blow struck was such a blow as it caused a big laceration and compression of the brain and rupture of the membranes and profuse bleeding. The strike was deliberate and directed. It was cold blooded and quarrel had taken place as evidenced before the trial was made—the quarrel had taken place a day earlier. The striking blow on the head was given when the deceased had fallen down. It was given on the most vital part of the body with great vigour. All these circumstances to our mind point to only one conclusion and to no other namely that the intention was not merely to cause injuries to the deceased but to kill him. The present case is on a point fully within the scope of observation of the Supreme Court which had been quoted thus by us.

The Supreme Court were also on *Ranjana v. Babu Singh* (1) In that case (*Babu Singh v. Ranjana*) which was decided by this Court (Justice B) has placed upon a Madras decision *Queen Maryam v. Dhanu Babu* (2) In similar circumstances in the Madras case one man had given a blow like on the head fracturing the skull and two other persons had inflicted other multiple injuries on the deceased. It was held that the person who had inflicted the blow on the head which had resulted in the death of the deceased was guilty of murder. We think that the ratio *decide* of the Madras case applies to the facts of this case.

It was further contended that if section 325 Indian Penal Code, did not apply to the facts of the present case, then it is so. It is not so. It is not so.

19-2  
Ranjana v. Babu Singh  
(1)  
1944  
Appellate 1

1400 case, the case would at the most fall with in the pur-  
 1410 view of section 304, Indian Penal Code and in this  
 1420 connection a decision of this Court in *Panda v. Prasad* 1-  
 1430 *Supra* (1) was cited. In that case the prosecution  
 1440 version was that the attack on the deceased was cold blooded  
 1450 and that it was not due to any immediate quarrel  
 1460 between the assailants and the deceased. It does not appear  
 1470 to have been accepted by the court as would appear  
 1480 from the following observations:

We think that it is almost certain that there  
 was no quarrel between the assailants and the deceased  
 and that that was the immediate cause of the trouble  
 between the parties.

In the circumstances the Bench did not draw the  
 inference that there was an intention to kill but held  
 that the accused intended to cause injuries which were  
 likely to cause the death of the deceased. We have  
 discussed this matter at length in a recent decision in  
*Behari v. State* (2). We have pointed out that the  
 nature of the offence committed will depend upon  
 (a) the intention of the accused (b) his knowledge and  
 (c) the nature of the injury caused. We stated:

When a fatal injury caused was sufficient to  
 the intention, causing of injury, to cause death, and  
 it could not be said that the injury was considerably  
 so negligently caused as to raise a presumption or a fact  
 that the intention was to cause the injury, which  
 has been caused and in such the case would fall  
 under clause (1) of section 304. It would be  
 particularly so if the attack was premeditated just  
 as it was in the present case. The presumption  
 can be rebutted. It is not the law that where  
 death is caused to one by a blow along the forehead  
 will necessarily fall under section 304. Indian Penal



<sup>that</sup> <sup>with</sup> the action which the Iowa Government may take <sup>after</sup> <sup>the</sup> Court passes its judgment. We are concerned <sup>with</sup> <sup>advising</sup> the law as we find it. If we find that according to the well-established principles of law we should award the sentence of death we shall not fail to do so even though the State Government may maintain it as a sentence of transportation for life. In the present case we find no justification for awarding the lower penalty by law. The attack on the deceased was cold-blooded, preplanned and well executed. We think that in the circumstances of the case, even though death was caused by one single blow, the appropriate sentence is one of death. We therefore dissent from appeal except the sentence and confirm the sentence of death which shall be carried out according to law.

Lewis stated his applied for leave to appeal to the Supreme Court. We do not remark, this day one has been made out for granting leave to appeal to the Supreme Court. The power is accordingly expired.

*Appeal dismissed.*

## CRIMINAL REVISION

*Before Mr. Justice Agnew and Mr. Justice  
Mellor*

KAMLA

v

1899  
February 4

STATE

Criminal Procedure Code, 1898, s. 133 (State-Prosecution against) Held by Magistrate—Opposite party producing a copy of Prisoner's statement only as it stated the accused of murder was not the only existing one stated as stated Magistrate justified in disregarding judge ruling of the District further finding no result below in preference of former Bench ruling of other courts

There a single judge ruling of the Court of an action date in holding on the same basis in preference to a later Division Bench ruling of another court

Where a Sub-Divisional Magistrate in proceedings under s. 133 of the Code of Criminal Procedure held a preliminary enquiry as directed by s. 133 A of the Code and the only evidence produced before him in support of the denial of the existence of public way was a copy of the Prisoner's statement which two months afterwards during was not shown though it did not concern one name above the existence of the public way in dispute

Held that the Magistrate was justified in holding that there was no reliable evidence in support of such a denial

Cause dismissed

Criminal Revision no. 425 of 1910 from an order of Khadi Uddin Ahmed Additional Sessions Judge of Goulkhar dated the 11th April 1910

R. C. Sharma for the applicant

R. B. Mitra for the opposite party

The judgment of the Court was delivered by—

JUSTICE J. —This is a revision arising out of proceedings under section 133 of the Code of Criminal Procedure. Ram Bahad Tewari complained that the

That  
Witness  
in  
Court  
Answered

applicants Landa and others had converted a house and  
converted it into a public thoroughfare and then afterwards  
and obstructed the passage through which cars and  
horses used to pass. A notice under section 171 of the  
Code of Criminal Procedure was issued by the Sub-  
Divisional Officer of Dacca to the applicants and others  
on which they filed an objection that there was no  
public thoroughfare in all the place in question.  
Under the provisions of section 172 A of the Code of  
Criminal Procedure the Magistrate is required to hold  
an enquiry whether there is reliable evidence in  
support of the denial of the existence of public way.  
The learned Sub-Divisional Magistrate accordingly held  
a preliminary enquiry as directed by law sections. It  
is admitted before us by learned counsel appearing for  
the applicants that the only evidence which the applicants  
could produce before the learned Sub-Divisional Magis-  
trate in support of his denial was a copy of the  
Patwaris record. This record did not contain any  
entry about the existence of the public way in dispute.  
If matters had stood at that and there was nothing  
further to be seen the document would be considered  
to be reliable evidence in support of the denial of the  
right of public way and the Magistrate could not  
properly have turned his hands and left the matter to  
appear the matter in the civil court. But as it hap-  
pened it was admitted by the applicants that each other  
roads which abuttedly existed in the place were not  
shown in the documents filed by them. This fact takes  
away all the evidentiary value from the document in the  
sense that no reliable evidence in support of the  
denial of the right of way is left. In the circumstances,  
the learned Magistrate was perfectly justified in hold-  
ing that there was no reliable evidence in support of  
such a denial.



Against this order the applicant went up in an appeal to the Additional Sessions Judge. The learned Additional Sessions Judge considered the quantum of evidence of a copy of the *Minutis* records which was submitted in evidence by the applicant was sufficient evidence in support of the denial of the right of way. He referred to *Satish Chandra Das v. Krishna Kumar Das* (1) in which it was held that the record of rights is a very valuable piece of evidence which creates a presumption of correctness of the same therein. He then referred to a Calcutta case *Manojan Ghose v. Khudoh Ghose*, Nagla (2) in which it was held that when the Magistrate comes to the conclusion that there is no reliable evidence in support of the denial it is not for the High Court to interfere in reason. This Calcutta case was a Division Bench ruling. Lastly the learned Judge referred to a single Judge ruling of the Calcutta Division *Lal v. Bhupendra* (3). In this case *JAIRAM J.* held that unless the evidence produced in support of the denial of the right of way is conclusive the matter is one which can properly be decided by a competent civil court. The learned Judge brushed aside the single Judge decision of the Court on the ground that a later Division Bench ruling of the Calcutta High Court overruled the opposite view. In doing so the learned Additional Sessions Judge was absolutely correct. Even a single Judge ruling of the Court of an earlier date is binding on the courts below in preference to a later ruling of another court. The learned Judge further did not apply his mind to the rulings cited before him. In fact the rulings were not correct factors at all. All of them were overrulable. In the case of *Satish Chandra Das v. Krishna Kumar Das* (1) the record of rights did not create an estoppel about the

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**  
 6. **References**

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exercise of the public right of way which was claimed by the applicants. There was nothing to show that the record did not contain even the slightest evidence of public ways. In those circumstances it was held that the record of title was a reliable piece of evidence in support of the claim of public right of way. The ruling did not apply to the present case because of the circumstances that admittedly the record of title here did not record the existence of claimed public ways.

In *Wagstaff v. Alexander Bazaar Company* (1) the learned judge had done the obvious proposition that when the Magistrate relies on inquiry and comes to the conclusion that there was no reliable evidence in support of the claim it is not for the High Court to interfere. It does not appear from the report of this case that there was any reliable evidence which the Magistrate refused to take into consideration. The ruling has no application to a case in which there was reliable evidence and it was wrongly insisted to be taken into consideration by the Magistrate. The ruling of the Court in *London & St. Pancras* (2) was in no way contradictory to the *Calcutta* case. This case then does not apply to the present case because in that case there was evidence in support of the claim of public way and the evidence was not flawed. Here as already stated there is no reliable evidence in support of the claim.

The result, therefore is that we find no force in the application. It is accordingly dismissed.

(Application dismissed.)

CHIEF JUSTICE ROY

MR. JUSTICE GIBSON

## APPELLATE CIVIL.

*Before the Honourable B. Mahalingam, Chief Justice and  
his Justice associates.*

LACHHMAN PRASAD (Deceased).

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Page  
No. 11 4

MST. KASHILASH AND OTHERS (Plaintiffs).

Indian Limitation Act, 1908, Art. 113.—Property of wrongdoer wrongfully attached in execution of decree by a decree holder—due to wrongdoer for damages for wrongful seizure of property under Art. 113.

When on the execution of a decree against a judgment debtor the decree-holder wrongfully attaches property belonging to a wrongdoer the suit by that wrongdoer for recovery of damages for wrongful seizure against the decree-holder is governed by Art. 113 of the Limitation Act and the limitation begins to run from the date of attachment.

(Ratio decidendi.)

Second Appeal no. 141 of 1918 from a decree of Raj Keshore Srivastava, Civil Judge of Benares dated the 18th November 1914.

The facts appear in the judgment.

P. H. Verma for the appellant.

R. A. Khera for the respondents.

The judgment of the Court was delivered by

MR. JUSTICE, J. —This is a defendant's appeal arising out of a suit for damages. In execution of a decree against one Mehmood Yar Khan a certain standing crop was attached and placed under the custody of one Farid Khan Sapkota. Two objections came forward claiming the crop to be their own. One of them was

**THE**  
**NEW**  
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100 N. YERGES ST.  
NEW YORK 17, N.Y.

Qasim Khan: His objection was countered by the evidence that his son was allowed to appeal by the appellate court. The other two Shari'ah Muhammadan witnesses' objections were sustained by the first court's appeal, before the appeal of Qasim Khan was allowed. There does not appear to have been any appeal against the decision in the objection of Shari'ah Muhammadan. The Superior heard even the case of Shari'ah Muhammadan before Qasim Khan's appeal was allowed. After Qasim Khan's appeal was filed at his instance, another namely, the plaintiff, filed the suit which has given rise to this appeal for recovery of the price of crops yielded in Rs 150. They submitted the document filed and no. 1 and the letter of Fard Khan, the *Syadar* defendant nos 2 to 5. They did not explain Shari'ah Muhammadan in any way.

In defense the builder, his partners and his clients say the house was damaged and notes that it was planned that the roof was to be covered by insurance. The trial court decided the new building that is now under way. The appeal against the decision was dismissed by the lower appellate court.

In the Second Appeal the only point raised before us is whether the site was owned by Americans. The issues presented for deciding the cases are as follows:

The movement of crops was made on the 14th November 1943. On the 14th June 1944 the crops were delivered by Ford trucks to the owner, Muhammadan. The next was that on the 14th August 1944 in many thousands of tons after the movement of the crops from before, the owner of the crops.

The possible factors we apply, up to one of five levels, may be divided into 50, 50, 20, or 10.





for specimen and excess of meat, but the cost for specimen was claimed as part of the permanent being stored and filed during the pendence, all cost.

Held, that the permanent had not exhausted itself and the plaintiff could file a second suit on the strength of the first judgment.

Ratio decidendi, that in the case of a month-to-month tenancy a plaintiff in occupying room for months prior to going in to evict, the apartment does not disquietly extrude from claiming his legal right to eject and thereby put an end to a permanent abode for being a suit.

Letters Patent Appeal no. 10 of 1911 from a decision of *Wabing Abroad*, J. in Second Appeal no. 1413 of 1909 decided on 15th December 1911.

The facts appear in the judgment.

*Solicitors*: Prasad for the appellants.

*D. Sen* for the respondents.

The judgment of the Court was delivered by—

**MAJ. C. J.**—This is a defendant's appeal against a judgment of a learned single Judge of this Court. The defendant was a month-to-month tenant of a house. His plaintiff gave a notice on the 11th of January 1942 requiring the defendant to vacate the house as rent by the 25th of February 1942. The suit out of which this appeal has arisen was filed on the 16th of March 1942 for specimen and excess of rent. Rent was claimed from 1st October 1940 to 30th June 1942 at the rate of Rs 37 8 and again from 1st October 1942 to 25th February 1943 at the same rate. For the period during which the defendant had continued to occupy the premises after the 25th of February 1942 that is from 1st March 1942 to 15th March 1943 damages were claimed at the rate of Rs 36 4 per month. As the Contract Reservations (Taxation) Control of Rent and Eviction Act (III of 1942) was applicable the plaintiff had taken the permanent

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of the Bureau Magistrate under section 1 of the Law of June 1917 and the plaintiff asked for the payment for his right to maintain the dam. The relevant portion of section 1 is as follows:

No one shall without the permission of the Bureau Magistrate be filed on his civil name against a person for his exercise from his private medium except on one or more of the following grounds:

(c) that the accused has wilfully failed to fulfil promises in the handling of any matter of importance one month after the expiry upon him of a notice of demand from the creditors.

The subsections in section 1 were not of importance as according to the plaintiff he had taken the permission of the Bureau Magistrate and he giving a valid notice to quit had terminated the tenancy with effect from the 25th of February 1948.

On behalf of the defendant two points were raised first, that the plaintiff could not recover himself of the permission as the permission had expired itself and secondly that the plaintiff was not entitled to claim damages for the period during which the defendant was holding over. The trial court held in plaintiff's favour on both the points with the result that he decreed the plaintiff's suit for recovery of Rs 1500/- only as rent up to 15th March 1948. The relief for occupation was refused.

On appeal by the plaintiff the lower appellate court decreed the suit for occupation and also decreed the plaintiff damages for the period during which the defendant had held over i.e. from the 1st March 1948 to the 15th March 1948.



The defendant filed a second Appeal in this Court and before the learned single Judge only two points were raised. Firstly, that the permission had exhausted itself and the plaintiff was not entitled to rely on it, and secondly, that the defendant having paid rent for the months of July, August and September 1940, and the plaintiff having accepted the same he had no right to rely on the permission. No point was raised before the learned single Judge as regards damages claimed for the period from the 1st of March, 1940 to the 15th of March, 1941.

In the appeal learned counsel has urged the two points that were urged before the learned single Judge and he has also argued that the plaintiff was not entitled to any damages after the 1st of March 1940. As the last point was not taken before the learned single Judge we cannot allow him to raise a new point before us. As regards the ground that the permission had exhausted itself and that the plaintiff by reason of his acceptance of rent was not entitled to rely on the same we are not satisfied that the applicant has been able to make out a good case.

The ground on which the argument is based is that the plaintiff had filed a suit on the 18th of December 1940 being suit no. 793 of 1940 for the recovery of the defendant and his agents of rent. The plaintiff had not obtained the permission of the District Magistrate for the institution of the suit. That suit was dismissed on the 27th of September 1947 for settlement though various orders of costs were decreed. During the pendency of that suit the plaintiff had applied to the District Magistrate for permission and the District Magistrate on the 27th of June 1947 had granted the permission in these terms:

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**Tom Christensen**, Managing Director

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Learned counsel has argued that having filed this petition in the previous suit and that it is having been dismissed the plaintiff cannot file a second suit on the strength of the same permission. The previous suit was dismissed on the ground that the District Magistrate had to give permission to file a suit and the permission given by the District Magistrate being to file a suit the plaintiff cannot avail himself of that permission to continue a suit already filed. The suit was so set on its face at the time of its filing and the defect of non obtaining the permission to continue a suit could not be cured by the subsequent obtaining of the permission. That being the position the plaintiff was entitled to file a fresh suit on the basis of the permission already given and there is nothing in this permission given by the District Magistrate in fact that he repeats by that permission that the plaintiff was allowed only to continue suit no 748 of 1948 which had already been instituted. As a matter of fact the permission is clearly worded and shows that the learned Magistrate granted the permission in accordance with the provisions of section 5 to file a suit in the civil court.

The other argument that the acceptance of rent for the months of July, August and September 1947 put an end to the possession has also no substance. The defendant was a tenant in month tenancy. Under the Transfer of Property Act the landlord was, and should

to terminate the tenancy by a notice in accordance with the provisions of section 106 of the Transfer of Property Act. By reason of the provisions of the United Provinces (Temporary) Control of Rents and Eviction Act, however, this notice could be of no avail unless the District Magistrate's permission had been taken to file a suit. The defendant was liable to pay rent to the plaintiff every month the rent as it became due and by waiving rent for the months of July, August and September it cannot be said that the plaintiff had done anything so derogatory himself from claiming his legal rights, to quit. The notice for eviction as we have already mentioned was given on the 22nd of January 1948 and it is not suggested that any rent was unpaid by the plaintiff after the date of the expiry of the notice.

The appeal has no force and is dismissed with costs. The stay order is discharged. The record may be sent down to the district court by an early date.

(Signed) District

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## CIVIL MISCELLANEOUS

*Before the Honourable B. Mohl, Chief Justice and  
Mr. Justice Agrawal*

KESHAB CHANDLA (Applicant)

*Plaintiff*  
*vs.*  
*Defendant*

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THE INSPECTOR OF SCHOOLS FARRUKHABAD  
and others (Defendant Parties)

*Continuation of Inba. No. 126—Educational Code, paragraph 16—Examination of student by Inspector of Schools without report or report from Principal—Order of institution of educational paragraph 16 of Educational Code—Schools under principles of*

When an Inspector of Schools passed an order concerning an applicant *X* along with other students without making any reference about the actual participation of *X* in the results or even calling for a report from the Principal of the "College" in which *X* was reading and where some trouble had occurred on the day of incident.

Held that the order of examination is inconsistent of paragraph 16 of the Educational Code and not having been made on a report of the Principal, the Inspector of Schools had no power to make it. The order also violated the principles of natural justice.

Civil Miscellaneous No. 248 of 1953

The facts appear in the judgments.

*R. C. Ghatak* for the applicant.

The Senior Standing Counsel (Govt.) Mr. Mehrotra for the opposite parties.

The judgment of the Court was delivered by—

**JALIL C. J.**—This case involves under an order issued out of office. On the 15th of September, 1952, there was some trouble in front of a school known as K. R. Rangay Higher Secondary School, Farrukhabad.

One of the boys reading in that School was the applicant, Keshab Chandra son of Mukta Prasad. He was a student of XII class. In the fracas between the police and the students two police officers received some injuries. A report was made at the police station that about 150 to 200 students had taken part in the incident but their names were not mentioned. The only name given in the report was that of a lecturer of the said School, Venk Chandra Shukla.

Whether the students of this particular institution had taken part in the fracas and who they were is not a matter about which we can express any opinion. We have been informed that there is a case pending against one student in the court of the Magistrate, Faridkot.

On the 5th of October, 1932 even before the students who had been arrested had been put up for identification the Inspector of Schools passed an order suspending a number of boys. On the 15th of September, 1932, the applicant was arrested but he was released on bail the same day. On the 5th of December, 1932 he was put up for identification but no one identified him as among those who had taken part in the affray. In the affidavits in support of the application it is mentioned that the applicant was never seen for or interrogated by the Principal of the School in connection with the incident and the Principal did not make any report against the applicant to the Inspector of Schools. It is further mentioned that neither the Director of Education nor the Inspector of Schools made any enquiries before releasing the applicant and some other boys on the 5th of October 1932. As a matter of fact in the suspension order even the name of the boy was not correctly given. He was described

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Keshab Chandra  
son of Mukta  
Prasad  
↓  
The  
Inspector  
of Schools,  
Faridkot  
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1932

27. Mahesh Chandra, son of Mahesh Prasad, through his agent, a Keshab Chandra, son of Mahesh Prasad.

None of this application was stated in the opposite parties, which included the Inspector of Schools, Faridkot, the Director of Education, Uttar Pradesh, the Board of High School and Intermediate Education, U. P., and the Principal, K. B. Saraya Higher Secondary School, Faridkot, and no counter affidavit has been filed on their behalf. We must, therefore, take it that the facts going in the affidavit in support of the application are correct. It would then seem that without any inquiry whatsoever asked for the head of the institution or for the Inspector of Schools or by any authority higher than from the applicant was frustrated, probably because of some private information of which we have neither the source nor the nature.

It is not necessary for us in this case to go into the question whether a student residing in an educational institution has any legal right to continue to read in that institution or whether any disciplinary action taken by the head of the institution or there is change of management of discipline can be made subject to scrutiny at a court of law. To hold that a student has a legal right to come to a court of law and require the head of the institution to justify his action where he has meted out some punishment or taken any disciplinary action will be subversion of all discipline in our schools and colleges and we must not therefore be deemed to have sanctioned any such suggestion by this order. As a matter of fact in more than one case we have observed that the Court will not interfere in the internal autonomy of educational institutions.

In this case, however, the question does not arise. No disciplinary action has been taken by the Principal

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who is primarily responsible for maintenance of discipline in the institutions. The Inspector of Schools is an officer appointed by the Government to supervise the work of those who are in charge of them, institutions and he is bound by certain instructions issued by the Government as to how he has to conduct himself in the discharge of his duties. Under paragraph 96 of the Educational Code of Class Protests 1953-54, item the head of an institution has been made responsible for maintenance of discipline and has been given the right to punish and even expel a boy from a school or college. In very serious cases where the student deserves severe punishment than he can inflict i.e. where a student has not only to be expelled from the school or college but his admission in any other institution has to be deferred, a report has to be made to the Inspector of Schools who gives an order deferring his admission in any other institution for a specific period. In this case the Principal took no action. His order was erroneous. The Inspector never discussed him to take any steps. There were no registers and yet they mentioned the boy. In the circumstances described in the affidavit we think that the Inspector was not justified in passing the order that he did. His action violates all principles of natural justice. He seems to have been very lenient in his action and he passed the order without even calling for a report from the Principal as to whether the boy had really taken part in the rioting or not. The order being in contravention of paragraph 96 of the Educational Code, and not having been made on a report of the Principal the Inspector of Schools had no power to make it.

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The result therefore is that we allow the writ application and we make the order of institution good.

1422  
—  
Karnataka  
Criminal  
P.  
The  
Commissioner  
of Districts  
Karnataka  
v.  
Maddur  
1422-23

by the Inspector of Schools on the 19th of October, 1921.

Before we leave this case, however, we may raise one that on behalf of the learned standing counsel has questioned of jurisdiction of the Court in passing the order under Article 226 of the Constitution when the restriction order was passed by the Inspector of Schools in contravention of the provisions of paragraph 96 of the Educational Code and not by the Principal who not raised and we have therefore not considered that question. Learned standing counsel pointed out that if the order of expulsion had been passed by the Head of the Institution or by the Inspector of Schools in accordance with the provisions of paragraph 96 of the Educational Code he would have raised the point that Article 226 could not be invoked in the applicant for the quashing of the order.

We do not think that it is a case in which we should make an order in this case.

Order accordingly.



## CIVIL MISCELLANEOUS

Report (to Justice Matham and Mr Justice Gault)

MATWAL CHAND (Applicant)

VS

1944  
May 2

DISTRICT MAGISTRATE MADAUN and others  
(OPPOSITE PARTIES)

Final Provisional Resolutions Act, 1936, s. 19(1)—*Power conferred by Municipal Board—Sanctions not valid in law—Whether Board has power to revoke it—Validity of order revoking resolution—Building By-laws no. 7 of unreasonably and illegal*

A municipal board having sanctioned a plan submitted to it has power to revoke that sanction subsequently if it is not a valid sanction in law.

The word "may" in s. 19(1) of the Municipalities Act was referential to the power to sanction and does not contain the optative words of the subsection.

Building By-laws no. 7 is not a valid and unreasonable law made as it does not comply an appropriate relationship with the rights of the subject.

Cases discussed

Civil Miscellaneous no. 34 of 1938

The facts appear on the judgments

A. F. Fawcett and E. B. Jackson for the applicants

The learned Standing Counsel (Specially Advising) for the opposite parties

The judgments of the Court was delivered by—

MR JUSTICE J. —This is a petition under Article 216 of the Constitution whereby the prisoners press for the issue of a writ of mandamus to direct the opposite parties to refrain from interfering with the further progress of the building by the petitioner of a temple.

1942  
 District  
 Office  
 District  
 Engineer  
 Mysore  
 Division

The facts upon which reliance is placed by the petitioner can be shortly stated. The petitioner is a Sikh who together with a number of other members of his community migrated to India from west Africa (Sierra Leone) at the time of the partition. These persons were provided with accommodations in a bachelors' hostel in the city of Bangalore which had been previously a Muslim locality. In 1942 the petitioner in his capacity as Secretary of the Punjab Sikhs' Welfare Union, Bangalore, purchased a vacant plot of land for the purpose of constructing a temple, school, room, and a library, etc. On the 14th August 1952 he applied under section 178 of the United Provinces Municipalities Act, 1915 for permission to erect these buildings on the land which he had purchased, and on the 14th September, 1952, sanction in this respect was given to him by the Executive Officer on behalf of the Municipal Board. Work on the construction of the temple was begun, and it is said that about Rs. 25,000 has already been spent.

Incidentally, as the result of the plot of the land purchased by the petitioner is a mosque which the petitioner was told at the time he purchased the land, partly or totally not to use. The construction of the temple is done primarily as the mosque has been a matter of concern to the other Hindu-Muslim religious communities of Bangalore, and on the 12th November 1952 the District Magistrate wrote to the President of the Municipal Board a letter in which he requested for a view that the construction of a temple adjacent to the mosque was not desirable from the point of view of law and order, and inquired whether this aspect of the matter had been considered by the Municipal Board. Presumably as a result of the latter's request was on the 14th November 1952 served by the Board on the petitioner intimating him that the mosque had been

involved. This letter has not been produced before us but according to the permission it was stated therein that the sections had been granted under a promise to the proposed construction concerned the provision of Building Bye Law no. 7 which is in the following terms:

7. No mosque, temple, church or other sacred or religious building shall be erected (a) unless the frontage is at least 15 feet from the centre of the street on which it fronts and (b) unless it is erected at a distance of not less than 100 yards from any other sacred or religious building of another sect or religion.

On behalf of the Municipal Board a lengthy affidavit has been filed a large part of which is hereby. The case for the Board is that the Executive Officer of the Board sanctioned the plans submitted by the petitioner without applying his mind to the statute that the plans submitted by the petitioner were not in accordance with Building Bye Law nos. 7 and 8 and that the sanction of the Board had been obtained by fraud and misrepresentation on the part of the petitioner. These however are not matters which we can examine in a petition under Article 226 nor is the view which we take it is necessary to do so.

The petitioner's contention is that the Municipal Board having once sanctioned the plan submitted to it had no power subsequently to revoke that sanction. To this it is answered that as the Board's power to sanction the construction of a building is under sub-section (1) of section 180 of the United Provinces Municipalities Act subject to the provision of any rule made the alleged sanction upon which reliance is placed by the petitioner was in law no sanction at all as an argument which the petitioner seeks to raise on the ground that the Municipal Board had power to

Page 13  
Municipal Board  
v.  
Petitioner  
[Citation]  
[Citation]  
[Citation]

Lord  
Goff  
of  
Chesham  
Chancery  
Division  
RSC v. T  
Marshall &

dispose with the requirements of its own bye-laws and that in this case it had done so.

The relevant portion of section 189 of the Act is in these terms:

(1) Subject to such by-laws as—(i) subject to the provisions of any bye-law the board may make as to matters not work of which notice has been given under section 178 is not necessary, is absolutely or subject to

certain directions that it may think fit to make.

Mr J P Fowley, who appeared for the respondents, has argued that the use of word "not" in this sub-section gives the Municipal Board power to ignore the provisions of its bye-laws if it so chooses. No authority has been cited in support of this proposition which would appear to involve construing the expression "subject to" as the equivalent of "non-obstante". In our opinion the word "may" has reference to the power to sanction and does not control the opening words of the sub-section.

The law on the point appears to us to be this. In *Kilbourn v. King* (1) a local authority empowered to make bye-laws for the regulation of building, suffered no jurisdiction purported as sanction given which were not in conformity with bye-laws. It is also stated by the local justices that (2) and

The district council could not control the law and bye-laws properly made have the effect of law; a public body cannot say more than private persons depend with law that have to be administered; they have no dispensing power whatever. This case was cited with approval in *William Brax & Sons v. Fifehead Rival Council* (3) where at page 487 Swaine L J said—

(1) 12 Q. B. 724 (1881) 4 Q. B. 188.

(2) 2 L. R. 700 (1874) 1 L. R. 100.

It is clear on the case of *Talbotson v. King* (1), referred to in the learned Judge's judgment that a local authority, has no power to require plans in connection of its own business properly made.

1920  
by order of  
the Court  
in  
Talbotson  
v. King, 1920  
100, 101

Mr. Pringle has drawn our attention to various cases in which the courts had held that a section once enacted cannot be revoked. namely *Great Portland v. Municipal Council, City of London* (2) *Fisher v. Boarding* (3) *The City of London v. Boarding* (4) *Almon v. Boarding* (5) *Almon v. Boarding* (6) and *Talbotson v. The Corporation of London* (7). We do not however think that these cases are of any assistance to him. For in none of them was the section which had been enacted by the municipal authority held to be in excess of its power, in each case the same was a valid section which it was held could not be revoked in the absence of express statutory provision. Particular reliance was placed by Mr. Pringle on *Talbotson v. King* (8). In that case the Corporation had granted to the plaintiff section 10, 11 and 12 on his giving a certain undertaking to the Corporation. The undertaking not having been complied with the Corporation purported to withdraw its consent. It was held that the section having been validly granted under section 140 of the London Municipal Corporation Act 1892 became absolute and the Corporation had no remedy in a civil court for enforcement of that condition. The case does not, therefore in our opinion touch upon the question which we have to consider here.

Finally it was suggested on behalf of the petitioner that Building Bye-law no. 7 was an unreasonable bye-law

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and members thereof. With this suggestion we are wholly unable to agree. A municipal board has, under subsection (6) of section 208 of the Act, power to make by-laws applicable to the whole or part of the water supply, consistent with the law and with the rule, for the purpose of promoting or maintaining the health, order and convenience of the inhabitants of the various parts; and under sub-section (7) of the same section it has the power given to it by item (1) of Item 1, A, to make by-laws

pertaining to the circumstances in which a mosque, temple, church or other sacred building, may or may not be erected, connected, or altered.

The Court will be slow to declare anything a by-law, the act of a local authority. The by-laws of such a body ought to be supported if possible or so it has been said they ought to be. Unquestionably unenforced and unenforced ought to be given to those who have to administer them that they will be reasonably administered. *Brass v. Johnson* (17) Learned counsel for the petitioners contended that the test was whether the law involved an oppressive interference with the rights of the subject. We are unable to see that this by-law has any such effect.

Although the petitioners have stated that in the same section was given to them the authority to make by-laws in the land and improved—an obligation which is strongly denied by the Missouri Board—we have not been argued before us that it did not constitute a religious building within the meaning of Building By-law no. 7. It is not in dispute that the erection of the proposed temple would constitute a construction of this by-law. Assuming that the by-law is not involved as being unreasonable and therefore not one of oppression in this case, we are of opinion

that the situation which the Executive Office purposed to accord to the petitioner on the 1st day of April, 1952, is in fact a valid situation as far as I am concerned, there being the petition filed and must be dismissed.

Wm.  
M. Harris,  
Attorney  
at Law  
1000  
Kendall Square,  
Boston,  
Mass. 2

During the course of the hearing we granted the parties in their request an adjournment to explore the possibility of arriving at an agreement satisfactory to both parties. Unfortunately no agreement has been reached. Nevertheless the matter appears to us to be eminently one in which the good sense of both parties should prevail. We understand that the building which is in the course of erection is capable, with only very minor alterations, of being used as a *discharge* and we understand further that the Municipal Board has no objection to its being constructed and used for this or any other similar purpose. In these circumstances we would like to express the view that, now that the case is over the parties will, in the general interest, be able to arrive at a satisfactory adjustment of their difficulties. In the circumstances we make no order as to costs.

*Application dismissed.*

## APPELLATE CIVIL

*Before the Honourable B. Mahab, Chief Justice and  
Mr Justice Ray*

**RAJESH SHRIMATI (Respondent)**

**v**

**Shri  
Muniraj**

**SHRIMATI RAMADEVI (Plaintiff)**

**Special Provisions (Temporary) Control of Rent and Eviction  
Act, 1948, s. 5 (a) (ii)—demand, explanation of the Act, s. 5  
Property Act 1952 s. 106—dispute under s. 106 of T. P. Act  
and s. 5 of Rent Act, if the law given, would naturally**

If the tenant of a premises with monthly, weekly, or daily rent, with the end of the month, had not paid rent to M, but had paid rent to M, then M would be liable to recover a decree on P on 1st September 1954, asking him to pay rent due, up to end of August 1955, within 10 days and also required him to pay a sum of Rs. 1000 on 1st September 1955. If not having paid, or if he had paid a sum for services of rent and expenses.

Maid, the B not having made any payment within the month of service of notice of demand on her, M had a right to file the suit and the law then the decree given 10 days, time did not remain the same.

Maid, further was a decree under s. 106 of the Transfer of Property Act, and a decree under s. 5 of the Control of Rent and Eviction Act can be given simultaneously.

Special Appeal no. 66 of 1963 from a decision of  
Sri Mohan Lal J dated the 11th February 1963 in  
Special Appeal no. 248 of 1962

The law appears in the judgments.

S. V. Form for the appellants.

S. V. Form for the respondents.

The judgment of the Court was delivered by—

MAHAB, C.J. —This is a Special Appeal filed against the judgment of a learned single Judge concerning a



second appeal under Order XLI, rule 11 of the Civil Procedure Code. The defendants are the tenant of a premises of which the plaintiff was the landlord. The defendants had not paid the rent since the 1st of May, 1951 and on the 4th of September, 1951, the plaintiff served a notice on the defendants asking her to pay the rent due up to the end of August, 1951 within 15 days. The notice also required the defendants to vacate the house by the 30th of September, 1951. The tenant was a month-to-month tenant ending with the end of the month. The defendants paid no heed to the notice and did not make any payment. On the 5th of November, 1951, the plaintiff filed the suit for arrears of rent and possession out of which this appeal has arisen.

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Section 3 (d) of the United Provinces (Temporary) Control of Rent and Eviction Act (III of 1947) requires that if a landlord has not obtained the permission of the District Magistrate to file a suit for eviction, he can only file such suit if one of the grounds mentioned in section 3 exists. The first ground mentioned in this section is as follows:

(a) that the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlord.

The fact that notice was served on the 4th of September, 1951 and no payment was made when the suit was filed on 5th of November, 1951, being admitted, the requirements of section 3 were fulfilled. The fact that the plaintiff has asked the defendants to pay the arrears within 15 days did not matter. The suit was not filed till after the expiry of one month. All that this clause requires is that the tenant should have wilfully failed to make payment within one month of

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the service of the notice. On the admitted facts that the defendant had not made any payment within one month of the service of the notice of demand on her the plaintiff had a right to file the suit and the law did not require the notice.

It is urged further that the defendant had done a period of one month a grace a time which to pay and during that period the plaintiff had no right to sue on her a notice under section 109 of the Transfer of Property Act (IV of 1882) Section 109 of the Transfer of Property Act provides that a lease of immovable property for any other purpose (that is not for agricultural or manufacturing purposes) shall be deemed to be a lease from month to month or quarterly, as the case may be, unless the lease is for a longer term expiring with the end of a month of a quarter. There is no reason why the learned counsel here should suggest that a notice under section 109 of the Transfer of Property Act and a notice under section 1 of the Control of Rents and Eviction Act cannot be given simultaneously. If the defendant had made the payment the plaintiff would have had no right to file a suit in reliance of the provisions of section 1 of the Control of Rents and Eviction Act.

The appeal was rightly dismissed by the learned single judge. The Special Appeal has not been set aside and dismissed with costs.

The stay application is now dismissed.

We notice that the appeal has not been registered in number. Notice of the appeal was accepted by learned counsel for the respondent. The office should register and number the appeal and prepare a proper decree.

*Appeal dismissed.*



which would be operative in India through me, in England. In support of this contention he relied on the case of *Mrs. Nani Gurmood v. P. J. S. Gurmood* (1). In that case P. J. S. held that where another person was proved to be domiciled in India, the Indian courts could grant a decree for dissolution of marriage which would be valid for all purposes through-out India, although it might not be operative beyond the limits of this country.

The first point that arises for decision is whether the respondent is domiciled in England. If there is proof, the petitioner also will be domiciled, as he is domiciled in that country, having the wife's domicile there follows that of his husband. The respondent came out to India about thirty years ago. He was formerly a Wireless Officer in the Army but later on he gave up that service and took up employment with the Railways. At the time of his marriage with the petitioner in 1930 he was a railway employee. The petitioner admits that the respondent is registered as a British subject with the British High Commission. Further she admits that he holds a British Passport. In 1948 i.e. before her marriage the petitioner had taken a British Indian Passport. But when he got it renewed in 1949 i.e. after her marriage her Passport was also renewed as a British Passport. She however adds that her husband had told her that he had an intention to visit an in India and to make India his home. I am not prepared to believe this portion of her statement. She had obviously made this statement with a view to prove the Indian domicile. On a consideration of the evidence on record I have no hesitation in holding that the respondent, and consequently the petitioner are both domiciled in England.



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opinion sufficient to establish the proposition that in either of these countries, there exists a strong moral rule of general law to the effect that a so-called matrimonial domestic violence constitutes a divorce marriage.

It is true that this was a decision on appeal from Canada and there was no general reference in the proceedings of Indian Courts. But under section 7 of the Indian Divorce Act the Indian courts are bound to follow principles and rules which are in accord as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being was and gives relief. Therefore if the English courts could not act on the principle of matrimonial domestic violence the Indian courts could not do so.

On page 448 the Lordships of the Privy Council in the *abovementioned* case came to the conclusion that, according to international law the domestic law of the time being of the married pair affords the only true test of protection to divorce their marriage. They concluded without reservation on the facts expressed by Lord President in *McKen v. Wilson* (1) and deprecated the scandal which arises when a man and woman are held to be man and wife in one country and strangers in another.

The common case up to now for divorce before the President of the Probate Court in England in the case of *Kryz v. Kru and Gray* (2). In that case the parties had obtained a divorce in the High Court at Lahore which divorce had subsequently been made absolute. But it was held by the abovementioned Court that the parties continued to be husband and wife and a fresh decree for divorce had to be granted. It was

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in such cases the British Parliament passed the Indian and Colonial Divorce Jurisdiction Act, 1869 (18 and 17 Geo V c. 11). By means of this Act the Indian courts were given jurisdiction, subject to very few limitations, to pass decrees for dissolution of marriage in cases where the parties were domiciled in England or Wales. The limitations were directed mainly to ensure that the practice and procedure to be followed in such cases would be in accordance with the law then in force in England. The result of this was that while the jurisdiction of Indian courts to give a decree for the dissolution of marriage in the case of a couple domiciled in England was completely taken over under the Indian Divorce Act, the real jurisdiction was confined in such cases under the Indian and Colonial Divorce Jurisdiction Act. This use of officers continued for about two decades till the advent of independence in India. On the 14th of August 1947 the Indian Independence Act (18 of 1947) came into force. By section 17(1) of this Act the jurisdiction of Indian courts to pass decrees for dissolution of marriage under the Indian and Colonial Divorce Jurisdiction Act is presently preserved till the dissolved Act is completely taken over. The Indian Independence Act was repealed on the 25th of January 1950 when the Constitution came into force.

If the jurisdiction conferred on a court by a statute Act is sought to be taken over, not by repealing the Act but by passing a subsequent Act, and the subsequent Act is being repealed, the law so placed on procedure by the subsequent Act is thereby preserved and the jurisdiction of the courts referred to is not equalled. This would have naturally been the effect of the repeal of the Indian Independence Act. But now that the Act has been repealed, the



Article 228 of the Constitution in which the relevant portion runs as follows:

*Subject to the provisions of the Constitution and to the provisions of no law of the appropriate Legislature made by virtue of powers conferred on that Legislature by the Constitution, the jurisdiction of, and the law administered in any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting thereon in District Courts, shall be the same as immediately before the commencement of this Constitution.*

By this Article the power of the High Courts has been kept confined within the limits which existed immediately before the commencement of the Constitution. Since the Indian High Courts by virtue of section 17 (1) of the Indian Independence Act had ceased to exercise jurisdiction to pass decrees for dissolution of marriages of couples domiciled outside India, the same has continued since after the coming into force of the Constitution. But for this provision yet another question could have arisen viz. how far the Indian courts could after Independence exercise jurisdiction conferred by the Parliaments of another country. But this question does not now arise.

The point now therefore is that the Indian courts have not jurisdiction under the Indian Divorce Act nor under the Indian and Colonial Divorce Jurisdiction Act to pass decrees for dissolution of marriages of couples domiciled outside India. In the circumstances I am now prepared to follow the decision of the Greek Cypriot Court cited above in which PILLAI J. took the view that the Indian courts could pass decrees which would be operative within the limits of India.

High  
Court  
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India  
at  
Allahabad  
Presiding  
Judge  
J. P. Pillai  
J.



## APPELLATE CIVIL.

Before Mr. Justice With Civil and Mr. Justice  
Mangroo

POULIAN HUGH AND ANOTHER (Defendants)

Filed  
January 2

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RADHEY LAL AND OTHERS (Plaintiffs)

**Under Provision Court Fees Act, 1920 s. 7 (c) Schedule  
I Art. 2 (4)—United Provinces—Agricultural Wages Act  
1921 s. 12 and 13—Application for enforcement of statute,  
writ—writings—Appeal in High Court—Interlocutory of  
appeal—Procedure of execution—Its method**

The statute provides for the enforcement of appeal  
against the decision of a Civil Judge in proceedings for an  
application under s. 12 of the Agricultural Wages Act in the  
amount or value of the subject matter in dispute on appeal  
which would be the market value of the produce in question.

*Abdul Wah v. Munsifdar (1)* *Rudra Lal v. Parda* on  
*Rudra Singh (2)* and *Rudra Singh v. Baidam* (1) *Amang  
Sing v. Baidam Lal v. Lalla Prasad* (2) followed.

For Appeal from Order no. 182 of 1947 from an  
order of K. P. Mangroo District Judge of Meerut  
dated 24th March 1947.

The facts appear in the judgment.

S. C. Ashoka, for the appellants.

The Junior Standing Counsel (Jagdish Sarma) for  
the respondents.

The judgment of the Court was delivered by—

**BERNARD J.**—This appeal is directed against the  
order of the learned District Judge of Meerut directing  
the appellants to file securities to the extent of

Rs. 1000 (Rs. 2000  
Rs. 1000 (Rs. 2000)

Rs. 1000 (Rs. 2000) and  
Rs. 1000 (Rs. 2000)

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Rs 120 in order to make up the deficiency on their memorandum of appeal filed before the District Judge against the decision of the Civil Judge of Muzaffarpur in proceedings on an application under section 22 of the Agriculturists Relief Act. The Inspector of Stamps and Registrars on examination of this memorandum of appeal held the view that the court fee was payable on the principal amount secured by the original mortgage as provided in section 7(a) of the Court Fee Act. In the present case the principal was secured for Rs 1000. The learned District Judge accepted this report of the Inspector of Stamps and directed the present appellants to make up the deficiency in court fee. The appellants in this appeal contend that the court fee was not payable on the principal amount secured by the original mortgage but ad valorem on the amount at which the appeal was valued in the memorandum of appeal.

There is no dispute that the court fee on a memorandum of appeal filed under section 22 of the U. P. Agriculturists Relief Act 1874 is payable under Article 1 B of Schedule I of the Court Fee Act. The amount of paper fee under that act is laid down to be the same as would be payable on a memorandum of appeal under Article 1. Reference has therefore to be made to Article 1 to determine the court fee payable in this case. Article 1 lays down that the consideration payable on a plaint, written statement, pleading, a set off or counter claim or memorandum of appeal would be determined by the amount or value of the subject-matter in dispute. This would show that the court fee on the memorandum of appeal filed before the District Judge was to be determined by the amount of the value of the subject matter in dispute in the appeal. The Inspector of Stamps whose report was accepted by

the District Judge was of the view that the amount or value of the subject matter in dispute in the appeal or such a case was to be determined with reference to section 79(a) of the Court Fees Act which lays down

In suits against a mortgagee for the recovery of the property mortgaged according to the principal money expressed to be secured by the instrument of mortgage

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There is no doubt that in a suit for the recovery of the property mortgaged, the value of the subject matter in dispute would have to be artificially fixed in accord with the principle laid down in section 79(a) of the Act and may, in a number of cases, be different from the market value of the subject matter in dispute. In an appeal arising out of such a suit also the valuation would have to be fixed artificially with reference to section 79(a) of the Court Fees Act, because clause (a) of section 2 of the Court Fees Act enlarges the definition of the word suit so as to include a fine or second appeal from a decree in a suit and also a Letters Patent Appeal. The word suit itself is not defined in the Court Fees Act and therefore reference has to be made to the Code of Civil Procedure to determine its meaning. Under section 15 of the Code every suit is to be commenced by the presentation of a plaint or in such other manner as may be prescribed. No rules have been framed under this section prescribing any other manner for the institution of a suit. A suit must therefore be deemed to be a proceeding arising on the presentation of a plaint. Proceedings under section 12 of the U. P. Agricultural Relief Act are instituted not on the presentation of a plaint but on the presentation of an application. There can therefore be no doubt that proceedings under section 12 of the U. P. Agricultural Relief Act are not a suit. Since the proceedings out of which this appeal before the lower court

most likely use is that, the word, *sum*, as used in the Court Fees Act would not include this appeal. If the appeal had arisen out of a suit then the word, *sum*, would have included the appeal also for purposes of the application of the Court Fees Act. The present is however a case where the appeal is not from a decree in a suit but from a decree in proceedings on an application. Consequently section 10(1) which fixes an *ad valorem* value for the subject matter in dispute in suits against a mortgage for the recovery of the principal mortgage cannot apply to this appeal. The decision of the learned District Judge accepting the report of the Inspector of Stamps that the value of the subject matter must be fixed with reference to section 10(1) of the Court Fees Act is therefore not correct.

It may however be surmised that even the constitution of the appellants that the court fee is payable of redemtion on the amount at which the appeal was valued by the appellants is not correct because the appellants do not possess the right to place any arbitrary value on the subject matter in dispute in the appeal. Since the value of the subject matter in dispute in the appeal has to be fixed without reference to any other provisions of the Court Fees Act which only apply to suits in first or second appeals from decrees in suits, the value must be held to be the value of the relief claimed in memorandum of appeal. In the appeal before the learned District Judge the appellants had challenged the right of the respondents to redeem the mortgage. Redemption was allowed by the trial court without any payment. The subject matter in dispute in the appeal was, therefore, the right of redemption without payment. This right of redemption translated into the usual form in which it can be conceived through the court means the right to get possession over the property mortgaged. In this case therefore the

value of the subject matter in dispute must be held to be the value of the property mortgaged, a decree for possession of which had been granted against the appellants, and was sought to be set aside on appeal by them. The value of the property has also to be determined without any reference to one of the provisions of the Court Fees Act. It is only in cases and on appeals arising out of suits that the value of the property, for purposes of court fee, is determined in accordance with the provisions of section 7 of the Court Fees Act. In the present case, this value will have to be the market value of the property which will have to be determined by the lower court independently of the provisions of the Court Fees Act and without application of the artificial principles which have been laid down under section 7 of the Act for determining the value of the property. In this case redemption has been allowed by the trial court without any payment. Even in a case where redemption is allowed on payment of a certain sum and the right of redemption is challenged on appeal, the court fee will have to be determined on similar principles. In such a case the value of the subject matter in dispute on appeal would normally be the value of the property in respect of which redemption was allowed minus the amount directed to be paid by the mortgagee in order to obtain possession of the property on redemption. This would be the subject matter in dispute because if the appeal is allowed the appellants would get the advantage of retaining possession *over* the mortgaged property but would lose the advantage of receiving a sum of the redemption money decreed.

Reference was made by the learned Justice Sankar Curjel to the cases of *Shah's Hop v. Panichathan* (1) and *Kothari Lal v. Pandurang Kishan Singh* (2) in

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reaches of typical according to the subject matter in dispute in appeal which would be the market value of the property in respect of which the right of redemption granted by the lower court is sought to be set aside on appeal. In the circumstances of this appeal parties must bear their own costs of this appeal.

*Appeal allowed.*

1997  
January 10  
1997

## APPELLATE CRIMINAL

*Before Mr. Justice Daul and Mr. Justice Agnew*

**DINA**

**v**

**STATE**

1997  
January 10  
1997

Criminal Procedure Code, 1973. s. 146—Evidence of eye witnesses and other witnesses of circumstances—Importance of circumstances also relevant for conviction—Direct evidence put in the account but not corroborative—Whether account prejudicial to it.

Where the evidence against an accused consists of circumstantial evidence only, it is of the utmost importance that the various circumstances which make the case against him, should be put to him and an explanation called for from him. But in a case in which there is direct evidence of eyewitnesses concerning the commission of offence by an accused and the conviction can be based upon this statement, there if the direct evidence is put to the accused, and the other circumstances are not put to him or cannot be said that the accused has been prejudicial thereby.

*See Singh v. State (P. referred to).*

Criminal Appeal no. 388 of 1996 from an order of Sub. Judge, Alwar Sessions Judge of Haryana dated the 21st August 1996.

The first appeal in the judgment  
of 11th 1997 1997

Investigate the case thoroughly for the appellant.

The Assistant Government Advocate (J. E. Bland)  
for the respondents.

the judgments of the Court was delivered by—

**Asensio-Idi, J.** — This is an appeal by Dabon who has been convicted under section 302 Indian Penal Code, and sentenced to imprisonment for life.

The appellant was prosecuted for having murdered one Purna. His crime on the 11th December 1949 at about noon in the house of one Bhikhar in village Todarpur in the district of Hamirpur. The protest was one was that in March (April) of 1949 the appellant lost his wife whereupon she left his house and came to stay in the house of Purna deceased and his brother Baidi cousin of the appellant. She stayed there for the night and in the morning Baidi persuaded the woman to go back to her husband and telling the appellant made his wife to go with him. The second took his wife out of the village and where their whereabouts were not known. It was not known whether she was alive or dead. The appellant then began to give out in the village that Purna had dishonoured his wife and that therefore he would kill her whomsoever he would get a chance. On the 11th December 1949 at about noon one Shoo Nath was taking his hair cut by Baidi Lal barber in the house of Bhikhar Babbar. Purna deceased also went there for his hair cut and shortly thereafter Dikar appellant also went there. After Shoo Nath had his hair cut the hair of Purna deceased were also cut and while his hair were being trimmed Dikar appellant suddenly took up an axe which was lying there and gave one severe blow on the head of Purna and ran away. He was chased by Shoo Nath but could not be caught. Purna fell down on the ground after receiving the blow. His

brother had been informed of the accident came to Bickham's house and then took Priya to the police station, Koron, which is at a distance of seven miles from the village by passing him in his cart. On the way to the police station Priya died.

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The first information report was lodged the same day at 3 p.m. The police came to the village at the night and investigation was made. Some of the clothes which the deceased was wearing and some blood-stained were taken possession of. The one which was also blood-stained was also taken into custody and two pairs of shoes one belonging to the deceased and the other alleged to belong to the appellant were also taken possession of. A recovery has been made and the clothes were sealed in a bundle with the exception of the shoes belonging to the appellant.

The post mortem examination was held the next day at 11.30 a.m. Two injuries were found on the body of the deceased (I) contused wound  $1\frac{1}{2} \times 1\frac{1}{2}$  inch just above the inner half of the left eyelid (II) incised wound  $\frac{3}{4} \times 1\frac{1}{2}$  inch on the right side of the parietal region of the head V above the right ear. The brain matter was protruding through the wound and clotted blood was present. The skull had been cut through and a circular piece of bone was completely separated. The meninges and the brain underneath the upper ear 2 were cut through. In the opinion of the doctor injury no. II could be caused by a fall or blow weapon and injury no. 2 was the cause of death of the deceased.

The appellant denied that he wounded the deceased and said that the case was started against him due to enmity. He did not however suggest what enmity there was between him and the deceased woman nor was such enmity put to the witness when they were cross-examined.

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In support of the prosecution case, three eye witnesses were examined. Babu Lal Dubey who was sitting on the floor of Shree Nath and the deceased Shree Nath who had his hand on his Babu Lal and was sitting at the time when the appellants struck the deceased with the axe and Ram Babu a boy of 14 or 15 years of age who was standing in front of his house which was opposite the house of Bhikari and who saw the appellants running away from the house of Bhikari and being chased by Shree Nath.

Besides these eye witnesses three other witnesses were produced. Panna Singh and Bani Gopal, members of the village deposed that Panna deposed had direct connection with the wife of the accused. Panna Lal deposed is an agricultural labourer by the accused of having murdered the deceased. From the statements of the eye witnesses alone apart from the evidence of other witnesses we are perfectly satisfied that the prosecution story that the appellants struck the deceased with an axe on the head which resulted in the deceased's death is true.

It was urged that the examination of the accused was wholly insufficient and consequently he was prejudiced and the trial was tainted. There can be no doubt that the examination of the accused both by the Magistrate and by the Sessions Judge was faulty. The Magistrate put the following questions to the accused:

Q—Did you on the 11th December 1944 at about noon, at Muzra Tollerpar P. S. Kanara attack anyone on Panna son of Mahadeo with the intention of killing him as a result of which he died?

A—No Sir. I did not attack him.

Q—Why was the case initiated against you?

A—It has been reviewed through counsel. I shall produce defence as the Sessions Court.

In the Sessions Court the following questions were put to the accused:

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Q—Did you make that statement (Ex. P 12), dated the 11th May 1948 before the examining Magistrate and whether it is correct?

A—Yes. It is correctly recorded.

Q—Do you want to state anything more?

A—Nothing.

Q—Is Ex. 3 yours?

A—No. It does not belong to me.

Q—Do you want to produce defence?

A—No.

Section 167 of the Criminal Procedure Code lays down that—

For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the court may at any stage of any inquiry or trial without previously warning the accused put such questions to him as the court considers necessary and shall for the purpose of such questions him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

The answers given by the accused may be taken into consideration in such inquiry or trial.

It has been held that the courts are bound to observe the provisions of this section and to put to the accused all such circumstances upon which reliance is to be placed by them against the accused. The object of the examination of the accused with reference to all the

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circumstances which appear against him in relation to the accused an opportunity of explaining these circumstances. The explanation so offered has to be taken into account in determining whether the circumstances are in fact against the accused and whether it is proper to charge the accused in guile of the offence with which he is charged. If the material circumstances are not put to the accused and his explanation is not called for, there is a danger that injustice may be done. It is what circumstances should be put to the accused depends upon the facts of each particular case. Where the evidence against the accused consists of circumstantial evidence only it is of the utmost importance that the various circumstances which check the case against him should be put to him and an explanation called for from him. But in a case in which there is direct evidence of eye witnesses concerning the commission of the offence by the accused and the circumstances can be based upon their statements alone, if the direct evidence is put to the accused and the other circumstances are not put to him, it cannot be said that the accused has been prejudiced thereby.

Our attention has been drawn to a decision of the Supreme Court in *Tate v. Scott* (1). We do not think that there is anything in that decision which is in conflict of what we have stated above.

In the present case, the substance of the offense which is alleged against the appellant and which was depicted in the two witnesses was put to him. The reason why the prosecution witnesses were depicting against the accused was also put to him in the second question put to the Magistrate through the series of the witnesses were not specifically mentioned. In the

Source: Court: the ownership of the shoes. Ex. 8 was also put to him. The questions regarding the motive of the offence direct conversation of Pyers deceased with the appellant's wife as alleged by the prosecution, and the facts that the appellant had beaten his wife six months before the incident, that she had gone to live with the deceased and Beulah P. W., that she was returned to the appellant the next morning by Beulah P. W. that the appellant had taken her out of the village and that her whereabouts were not known, were not put to him. The same factual confusion made in Pyers Ltd was also not put to him.

In our opinion, some of these questions should have been put to the appellant. But we are unable to say that because of the omission the appellant has been prejudiced in any way. We arrive at this conclusion for the reason that in our opinion the statements of the witnesses are simply sufficient to justify the conclusion of the appellant. The reason that can be said for the omission of the material circumstances is to be put to the accused is that those circumstances may be omitted from consideration against the accused. If after viewing those circumstances the accused's conviction can be maintained it can be said that he has not been prejudiced by the omission. In our opinion in the present case, even after viewing all the circumstances omitted above which were not put to the accused, we are prepared to hold that the appellant did in fact inflict the injury on the head of the deceased with an axe which resulted in his death and accordingly the appellant was rightly convicted of having caused the death. Causing of a serious injury on a vital part of the body of the deceased with a dangerous weapon like an axe, must necessarily lead to the inference that the

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 appellant requested to hold the deceased. For you there  
 find clearly guilty of murder  
 We accordingly dismiss the appeal and confirm the  
 conviction of and the sentence imposed upon the appel-  
 lant by the court below

*Appeal dismissed*

## CIVIL REVISION

*Before Mr. Justice Dean*

SUKHNANDAN (Plaintiff)

vs.  
January 21

17

SILAN-KER and Others (Defendants)

**United Provinces Debt Redemption Act, 1880, s. 17—United  
Provinces Agricultural Relief Act 1904 s. 13—*Repeal*—*In  
effect***

Section 13 of the Debt Redemption Act unconditionally, and  
for all purposes repeals s. 13 of the Agricultural Relief Act  
and its savings clause as from 1904 and its subsequent amend-  
ments.

*Repeal Act s. 13—United Provinces Debt Redemption Act s. 13—*In effect**

Civil Revision no 183 of 1884 from an order of  
Sarda Datta Sharma, District Judge, dated the 11th  
September 1881.

The facts appear in the judgment.

*E. G. Johnson, for the appellant.*

**DEBATT.** J. —This is an application by a plaintiff whose  
suit under section 17 of the Agricultural Relief Act  
for redemption of a mortgage executed on the 16th April  
1884, has been dismissed by the appellate court on the  
O. L. R. 1884 p. 17.





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There is nothing in the Act to lend support to the contention that if other provisions of the Act cannot be applied in a given case section 27 also should not be given effect so that section 12 of the Agricultural Relief Act should not be deemed to have been repealed by it. The words *and to which this Act applies* have been used in the Act in a special and technical sense and not in the natural sense. They certainly do not mean a case in which the provisions of the Act would be applicable if they were only and not more a case relating to a loan as defined in the Act. If certain provisions of the Act are applied in a case to which this Act applies it is not because of what those words mean generally but because those are express provisions in the Act itself making themselves applicable to it. The contention of Mr. K. C. Bellamy that in the foregoing case was not a case to which this Act applies, no provision of the Act not even section 27 was applicable and that consequently as regards it there was no repeal of section 12 of the Agricultural Relief Act is founded on giving the words *and to which this Act applies* their natural meaning and not the special or technical meaning given to them by the Act. Those words may be understood only in the technical meaning given to them in section 2(17). If a case relates to a loan the provisions of the Act will be applied to it if it relates to an advance which is not a loan, the provisions of the Act will not be applied to it but it does not follow that effect should not be given to the provisions of section 27 of the Act and that section 12 Agricultural Relief Act should not be deemed to have been repealed. The simple reason is that giving effect to section 27 does not depend upon giving effect to some other provisions of the Act in a particular case. Effect will not be given to that section only if there are positive words as in section 4 laying down that effect shall not be given to any

provisions of the Act. The Debt Redemption Act has got to be applied in every case so far as it is applicable. If a particular case is not covered by the language used in the Act, a decision will not be governed by the Act but that does not mean that the Act is not given effect so far as provisions of sections 27 must have their effect.

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 Act  
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*Shogren Inc v Gossens Railway Ltd* (1), cited by Mr. Justice has no application to the facts of this case. In that case the Full Bench merely interpreted the words. The provisions of this Act shall not apply to a riot appearing in section 4 of the Debt Redemption Act. No such words appear in section 27 or (17) of the Debt Redemption Act. If a rioter makes a declaration that he would not proceed against the person or property of an agriculturalist the provisions of the Act including those of section 27 will not apply. But there are no words laying down that no provisions of the Debt Redemption Act will apply to a case relating to an advance made after the 1st June 1940. Certain provisions of the Debt Redemption Act are made applicable to a riot relating to an advance made before the 1st June 1940. They will not apply to a riot relating to an advance made after the 1st June 1940 but there are no words in the Act to the effect that the other provisions of the Act will not apply in the case or will not be given effect to in relation to it. Therefore no more can be said from the decision in that case.

There is no issue in this application and it is dismissed.

*Remains dismissed*

IN THE COURT OF THE

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## CIVIL REVISION

*Before Mr Justice Rana Bhanu Prasad and Mr Justice Mukherj*

PARASRAM SHUKUL (Plaintiff)

1948  
April 11

1

RAJDESHARI PANDIT and others (Defendants)

**Issue.** *Limitation Act, 1908 s 19 Act 19—Redemption of mortgage—Deed of compromise—Admission of mortgaged property in acknowledgment—United Provinces Agriculturists Relief Act 1936 s 12—Application for redemption—Period of limitation—Starting point.*

A mortgagor of the mortgaged property, in a deed of compromise made with the mortgagee, admitted the property and was not at the time of acknowledging the liability of redemption, does not remain in an acknowledgment within the meaning of s 19 of the Limitation Act.

It is held in a compromise mortgage in an application under s 12 of the Agriculturists Relief Act to ask for the recovery of possession of the mortgaged property without payment of the mortgage money of a has been paid up from the mortgage of the mortgagee and the period of limitation for such an application is only four years from the date when the mortgage money was so paid and the right to recover possession accrued.

*Cause allowed.*

Civil Revision no 621 of 1948 from a decree of Subordinate District District Judge of Gorakhpur, dated the 10th May 1948.

*K L. Mait and C. B. Mait, for the appellants.*

*R. E. Prasad, for the opposite party.*

The case was at first heard by Justice J who referred it to a Bench.

The judgment of the Court was delivered by—

His Honor Justice J.—“This is a mortgagee’s peti-

Loss is recoverable from the judgment, dated the 15th May 1948, passed by the learned District Judge of Coimbatore upholding the judgment, dated the 15th April 1946 given by the learned Sub-Divisional Officer of District. It arose out of proceedings under section 12 of the United Provinces Agricultural Relief Act. The relevant facts are as follows:

**Hill  
Publishing  
System,  
Inc.  
Division of  
Hill  
Books**

On July 26, 15, and 1941 a supplementary mortgage in respect of an agricultural plot was made by the applicants' successors to the opposite parties' predecessors. On the 1st March 1942 that is to say more than one year after the date of the mortgage the application for redemption was filed. The applicants contended that in the year 1911 there was an acknowledgment of the main debt and so the case was barred from the operation of the bar of limitation. It was further contended that according to the provisions of section 2 of the United Provinces Debt Redemption Act, 1943 there was a fresh run of limitation when that Act came into force viz. up to the 1st January, 1941. The trial court held that the case was barred by limitation and learned District Judge upheld that order. The mortgagee therefore comes on to review.

The first question is whether there was an admitted adultery within the meaning of section 19 of the *Matrimonial Act*. It appears that in 1918 there was a partition suit among the members of the mortgage family being set on foot in the court of the *Ward of Highways*. In the course of that partition suit a controversy was raised as to and were also there was the following, most interesting, fact.

Whatever land is in possession of the plaintiff under the mortgage deed dated 10th Sept 1934, is owned by Gur Dutt, father of Defendant.

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and Debra, managers, shall continue to engage in cooperation of the sheriff.

The commission on behalf of the petitioner is that this amounts to an acknowledgment under section 19 of the Limitation Act. This section provides

Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made or writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability a fresh period of limitation shall be computed from the time when the acknowledgment was so made.

Explanation 1 provides, *inter alia*, that it is not necessary that the acknowledgment should be addressed to the person who seeks to take benefit of it under section 18. Nevertheless, an acknowledgment of liability necessarily implies a conscious acknowledgment of liability. Hence in considering whether certain words amount to an acknowledgment of liability it may be more wise in the case of saying them the writer had in his mind the question as to his liability or whether he was thinking of and referring to some other matter. If the transfer of the mortgaged property in the deed or compromise was only for the purpose of discharge of the property, as we think it was, and not with the idea of acknowledging the liability of redemption, then on our view it would not amount to an acknowledgment within the meaning of that word as used in section 18 of the Mortgage Act.

There are some decided cases bearing on this point. In *Khai Nam v. Fook Nam Co.*,<sup>1</sup> a District Court was faced with a description of the property purchased by the

defendants' promissory and his signature showing and on that document there was a reference to the mortgage. It was held that the defendants did not amount to an acknowledgment of liability within the meaning of section 19 of the Limitation Act and the intention of the mortgage was merely for the purpose of description of the property. In *Musammat Sham Devi v. Bhagwan Datt* (1) there was a sale-deed in which the property purchased was described as subject to a mortgage and only the mortgagee's rights were sold. It was held that all this, the vendor intended was that he came into possession of the property on the foot of a mortgage. No question arose in his mind as to whether the mortgage referred to had become transferred. The intention in the sale-deed he still did not equate to the intent of the parties making it as to say that also that the maker of the instrument thought or believed that he was liable to be redeemed at the date of making the instrument. Such a statement therefore was held not to be an acknowledgment within section 19. In *New River v. Eastern Co.* (2), there was an application for sale of a mortgaged property under Order XXXI rule 66 of the Code of Civil Procedure and in support of it there was an affidavit to the effect that upon an examination of the register's office the applicant found that there was a mortgage deed of the property of which the title proclamation was so made. It was held that this statement did not amount to an acknowledgment of liability affixed to the property or personally to the applicant within the meaning of section 19.

Learned counsel for the applicants has turned our attention to the Full Bench case reported in *Deo Chand v. Sarjan* (3). That was a case in which the defendants had stored as correct the record of rights prepared at a settlement with view of an estate in which they were

1927  
MUSAMMAT  
SHAM DEVI  
v.  
BHAGWAN  
DATT  
1927  
NEW RIVER  
v.  
EASTERN CO.  
(1927)

(1) A.I.R. 1933 20 26. (2) A.I.R. 1933 48 51.  
(3) 1927, 12, 2, 1 26 27.

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v.  
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Singh  
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[Full Bench  
Division]

decided as mortgagee of the rent, but which did not mention the name of the mortgagee. It was held by the majority of the judges that there was an acknowledged mode of the mortgagee's right to redeem, within the meaning of Article 114, Schedule II of Act IX, of 1871, the present one. In the settlement, the nature of rights is expressly brought into view. However, the language, of section 18 of Act IX, of 1871 was quite different. We are of opinion that the principle laid down in the Full Bench case is not applicable to the present case.

For the reasons given above and on the authorities cited above we hold that the result as the deed of our premises of 1941 does not amount to an acknowledged mode within the meaning of section 18 of the Limitation Act of 1908.

The second point argued is that with the commencement of the Limited Possession Debt Redemption Act 1940 a fresh case of limitation was given, from the 1st of January, 1941 when the Act came into force. Balance is placed upon *Ram Prasad v. Balakrishna Vagh* (1). The view taken in that case was that Article 118 of the Indian Limitation Act 1908, provides two types of suits—(i) for redemption of a mortgage and (ii) for the recovery of possession from a mortgagee of immovable property. For the redemption, the time from which the period of limitation begins to run is when the right to redeem accrues and for the recovery of possession the time begins to run from the date when the right to recover possession accrues. In the application under section 12 of the Agricultural Debtors' Act the relief claimed was for the recovery of possession only. In equity suits there was no claim for the redemption of the mortgage. In para 4 of the plaint it was alleged



that the entire mortgage money had been paid up from the contract of the property. The right to recover possession of the property in the present case therefore, arose when the entire mortgage money became paid up from the contract of the property. Prior to the United Provinces Debt Redemption Act according to the law as in then stood the mortgage money was not secured. The term in the mortgage deed was that interest of the property will go towards the payment of the interest. According to this term the interest could not be applied towards the repayment of principal. When the United Provinces Agricultural Relief Act, 1934 was passed statutory rates of interest were provided and they were so provided against the contractual rates but those statutory rates according to section 14 of that Act were to be applied only from January 1, 1935. Prior to that date the provisions of the Uthmaniyah Loans Act, 1912 were applicable but prior to 1912 the contractual rates were so provided. It is not shown in the proceedings that according to the provisions of the United Provinces Agricultural Relief Act the mortgage money in the present case became paid up before the commencement of the United Provinces Debt Redemption Act. It was in section 3 of the United Provinces Debt Redemption Act that provision was made that interest on a secured debt shall not exceed 4½ per cent per annum simple and in the determination of the amount due under a loan not only the sums actually paid by or on behalf of the debtor but also the net profits realised by the mortgagee or which with the nature of ordinary diligence might have been realised by him shall be taken into consideration. The position in the present case is that the mortgage money was secured only when the accounts were taken in accordance with section 3 of the United Provinces Debt Redemption Act, 1934. The evidence does not show that section

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could be applicable was the 1st of January, 1941. Hence it must be taken that on that date the right accrued to the mortgagee in the present case to recover possession of the mortgaged property without the payment of the mortgage money. That being so, herein too for a suit for the recovery of possession under Article 108 began to run from the 1st January 1941. In this case of the case the second suit is within time.

It has been argued that the present case is not for recovery of possession as contemplated by section 82 of the Transfer of Property Act 1882 but is a suit pure and simple for the redemption of a mortgage under section 80 of that Act. This is a mis-statement under section 80 nor section 82 of the Transfer of Property Act. It is an application under section 12 of the United Provinces Agricultural Relief Act, 1934. A close examination of this section leads us to the conclusion that it embraces within its scope the nature of suits both under sections 80 and 82 of the Transfer of Property Act. It starts with the opening words notwithstanding anything contained in section 80 of the Transfer of Property Act 1882 or any contract to the contrary. A perusal of that section and the succeeding ones in Chapter III shows that section 12 is an elaboration of section 80 of the Transfer of Property Act. Section 80 is wide enough to cover both the right of mortgagee—simple and usufructuary for the last paragraph of that section provides for the delivery of possession to the mortgagee. Section 80 is a general section declaring the right of redemption of the mortgagee. It contemplates a usufructuary mortgage for clause (b) of that section provides that a mortgagee may require the mortgaged property or part at any time after the principal money has become due and after the mortgage money



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the right to recover possession accorded. This is the interpretation of Article 140 of the Constitution Act.

The result is that the revision succeeds and it is hereby allowed. Parties will bear their own costs throughout. Possession will be delivered by the mortgagee in July 1955.

*Revisions allowed.*

## APPELLATE CIVIL

*Before Mr. Justice Sankar Sen and Mr. Justice Brij Mohan Lal*

GAURI SHANKER and SONS (Plaintiffs)

1957  
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19

## UNION OF INDIA (Respondent)

Indian Arbitration Act, 1930, s. 34—Claim for breach of contract and compensation for loss—Claim for damages under independent of arbitrator's award—If they are not by court before judgment.

G, a joint Hindu family firm, filed a suit against the Union of India for breach of contract by the East Indian Railway and claimed Rs. 1,00,000 as damages for breach and a sum of rupees one lakh as compensation for loss. On an application by the Union of India, the Civil Judge asked the arbitrator to file an award under s. 34 of the Public Act which provided that, in the event of any question or dispute arising under these conditions, or in connection with the contract, or in any matter the decision of which is specially provided for by these conditions, the same shall be referred to the award of an arbitrator, shall be bound by the award of the arbitrator.

Held that the claim for damages being covered by para 14 of the contract, could be referred to arbitration but the claim to recover compensation for loss was being within the four corners of the agreement was really only by a court.

of law as the claim under suit was totally disowned from one national dispute among themselves.

*Munim v. Begum-e-Bihar District Court* (2) relied upon and *Lacquer v. London Passenger Transport Board* (3) also suggested.

From Appeal From Order no. 8 of 1952 from an order of Order Behan Lal Civil Judge of Meerutabad, dated the 20th October 1951.

1952  
 Allahabad  
 District Court  
 Civil Appeal  
 No. 100  
 From an  
 Order  
 of  
 Behan Lal  
 Civil Judge  
 of Meerutabad  
 dated the 20th  
 October 1951

The facts appear in the judgment.

*A. P. Pandey*, for the appellant.

*Jagdish Swarup*, for the respondent.

The judgment of the Court was delivered by—

**JAG MOHAMMAD, J.**—This is an appeal by the plaintiff against an order passed by the learned Civil Judge of Meerutabad during order no. 84 of the Arbitration Act (X) of 1940 a suit instituted by him against the Union of India.

The appellant is a joint Hindu family, now carrying on the business of contractors. It entered into a contract to supply large quantities of stone boulders and stone chips to the East Indian Railway at various stations Kanpur. Some differences arose between the appellant and the railway authorities. Certain letters were exchanged between them but they served only to widen the gulf between the two. Eventually the railway authorities cancelled the contract removed the appellant's name from the list of approved contractors and cancelled that decree to all the Nagpur Stations with the result that the appellant became defamed from securing any contracts from the railway administration in future. Thereupon it instituted the suit which has given rise to this appeal to recover a sum of Rs. 5,787.4.8 in damages for loss of contract and a further sum of Rs. 1,00,000 as compensation for libel. Its contention





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by the appellate is totally different from the assessing of performance of contents of delivery of some business, and some steps. It is totally immaterial for the discussion of the claim for damages as to whether the appellate was guilty of breach of contract, to supply the alleged consideration, or whether the railroad authority has prevented the appellate from doing performing, has part of the contract. The claim under this brought by appellate is totally different from the contractual dispute arising between the parties.

In this connection reference may be made to the case of *Morse v. Bishop's Elect District Council* (1) in that case also there was an agreement between the parties.

If at any time any questions, disputes or differences shall arise between the contractor and the company and the contractor upon or in relation to an agreement with the contract, the matter shall be referred to and determined by the company.

The contract was to send the container on the ground that his consents therein had been obtained by fraudulent misrepresentation. The other party pleaded the alleged agreement as bar of the tort. It was held that the case was not barred because the alleged fraudulent misrepresentation was not a dispute upon or in relation to or in connection with the contract. On behalf of the respondents reliance was placed on the case of *Lancaster v. London Foreign Transport Board* (2). In that case there was no agreement to the effect that the defendants would remove the plaintiffs' property and effects from London to Marseilles and would indemnify, keep and take care of them there. The plaintiffs claimed damages on the allegation that the defendants



had been negligent in the discharge of their duty, and had caused loss to him. There was an arbitration clause and relying on that clause it was contended by the defendants that the dispute should be referred to arbitration. The plaintiffs contended that the alleged cause of negligence raised an issue of tort and should be tried by court. This plea was overruled by the court. The authority has been cited by the learned counsel for the respondents in support of the contention that a question of tort also can be referred to arbitration. The decision in this case does not lend support to that proposition. It was pointed out in the judgment of that case that the terms of the agreement imposed an obligation on the defendants to observe due diligence in the discharge of their contract and that negligence shown by them amounted to a breach of the terms of contract. It was pointed out that negligence was a negation of due diligence and therefore a breach of contract. It was on this ground that the court held that although allegation of negligence *prima facie* gives rise to an issue of tort, it raised really an issue other than an issue of breach of contract. One important sentence in the judgment at page 253 will bear quotation. It runs as follows:

In the present case there is an allegation of negligence in the contract itself pleaded in para 2 of the statement of claim and apparently consistent with the non-extracted obligation of diligence.

It will therefore follow that the authority does not support the respondents contention. In the circumstances we are of the opinion that the dispute relating to compensation for the alleged deformation does not fall within the purview of the arbitration clause.

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It may also be pointed out that section 14 of the Arbitration Act does not make it obligatory on the court to accede to the dispute in arbitration. It gives the court a discretion to say the proceedings in court. If it is conceded that there is no sufficient reason why the matter should not be referred to an arbitral way with the arbitration agreement. In the present case we find that a big claim like that for the recovery of a sum of Rs.1,60,000 has been maintained against the Union of India and serious obligations have been made against responsible public servants. The conduct of the Chief Engineer and the Deputy Chief Engineer will have to be examined and the decision of this case may affect the prospects and the persons of the said officers. The arbitrator in the present case will be the Deputy Chief Engineer who will be equal in rank to one of the officials whose conduct will be subject to enquiry and lower in rank than the other official viz. the Chief Engineer. It does not seem desirable that an enquiry against the then Chief Engineer and the then Deputy Chief Engineer should be entrusted to the hands of the present Deputy Chief Engineer. We are of the opinion that even if otherwise the case had been one which fell within the purview of the arbitration agreement we would have referred from among the proceedings in court and referred it to arbitration.

It was suggested on behalf of the appellants that since the general purview of the claim is to be tried by the court, the parties relating to the heads of contract etc., as well as the decision of this Court, be directed to be tried by the Civil Judge. We are not prepared to accede to this request.

It is true that the court has undoubtedly a discretion in the matter but the said discretion is to be used judiciously. Once it is conceded that the matter is covered by the arbitration agreement the court should

laid its weight in the endorsement of the agreement. If the parties intended that their dispute of a dispute notice should be referred to arbitration, the court should not, in the absence of any special reason to the contrary, validate that agreement.

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The court, therefore, is that the appeal is allowed in part. The case shall be sent back to the Civil Judge who will try the portion of the claim which relates to the recovery of Rs 1,00,000 as damages for defamation, and will settle the dispute as arbitrators in respect of the claim for recovery of Rs 3,33,543. The parties shall pay and receive the costs of this appeal in accordance with their failure and success.

Abstracted in: *Abstracts in Social Psychology*

## APPENDIX 1

Authors: Mr. Justice Gauthier and Mr. Justice Chouinard

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1

Figure 1

Health Care Financing Agency, 1992; O'Neil and S. J. O'Neil, 1993; and H. A. J. van den Broek, 1993).



Rule 29 (Upper) NOTED of the Rules of the High Court providing for an application to be made for condonation for late to appear to the Supreme Court under Art 102 (7) or Art 104 (3) (b) of the Constitution before or at the time of the delivery of evidence as required, provided it is not shown that

Application for leave to appeal to the Supreme Court  
in Criminal Appeal no. 1004 of 1998

## The New Version of the Standard

**Figure 1**

Group	Percentage (%)
All Americans	78
Democrats	82
Republicans	75
Independents	79

1952  
INVESTIGATION  
OF  
MURDER  
—

The judgment of the Court was delivered by—

**AGATHAIA, J.**—This is an application for leave to appeal to the Supreme Court against a decision of this Court dismissing the appeal of the applicants against their conviction under section 302 read with section 141, Indian Penal Code. The application was not made before, or at the time of, the delivery of judgment as required by rule 24 Chapter XXIII of the Rules of the Court but was made later on. The application is liable to be dismissed on the ground that it has not been made in accordance with the aforesaid rule. But it is contended by learned counsel that the rule itself is ultra vires. We are not prepared to accept this contention.

Rule 18 Chapter XXIII of the Rules of the Court provides

An application for a certificate under article 132(1) or 134(1)(a) of the Constitution in a criminal proceeding shall be made to the Court *in writing* before or at the time when any judgment, final order or sentence is passed. The court shall thereupon record an order granting or refusing to grant such certificate.

The provision regarding an application being made *before* any judgment, final order or sentence is passed, in this right would appear to be peculiar and impossible of compliance. But this provision is intended for the convenience of counsel who after the close of the arguments wish to absent themselves from the Court when the judgment is being delivered, or if the judgment is reserved when it is to be delivered on a future date so that they may at that time make up and request to the Court that in case the case is decided against them, leave may be granted leave to appeal to the Supreme Court. The provision is merely enabling and not

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obligatory. The application may be made at the time of delivery of judgment. Two objections can be taken to the provision that the application should be made at the time when any judgment, final order or sentence is passed. Judgments are delivered in open court and several may at once apply to the Court, either orally or in writing, whether they take a certificate under Article 132 (1) or 134(1) (a) of the Constitution. The bar to an application being made later on is intended to prevent accumulation of work in the Court and waste of the time of the Court in hearing the application later on. If the application is made at the time when the judgment is delivered all the facts of the case are in the minds of the judges deciding the case and they can decide the application forthwith without wasting any time. We do not think that rule 28 is ultra vires of the powers of the court. However we have heard learned counsel in support of the application and considered the facts of the case on their merits and have come to the conclusion that there is no force in the application. The Court believed the prosecution witnesses and disbelieved the defence. The two witnesses had explained all the applicants and it was not necessary in the circumstances to examine the individual cases of the applicants because the evidence against each of them was identical. The common object of the applicants was found to be the giving of a severe beating to the deceased. The only case as to the common object may be deduced from the circumstances appearing in the case. It is not necessary and indeed often impossible that there should be direct evidence of common intention. The question involved in the case was purely one of fact and we do not think that we will be justified in granting the costs proved for by the applicants.

The application is rejected.

*Application refused*

## APPELLATE CIVIL

*Before the Honourable B. Mook, Chief Justice and  
Mr. Justice Kirtapoo*

CHHEH SAHU AND ANOTHER (Respondents)

v

MUSAMMAF SHIGOLAJI (Plaintiff)

*United Provinces Debt Redemption Act, 1946, s. 2—Order  
denoting an application under s. 4—Q applicable*

*An order denoting an application under s. 4 of the United  
Debt Redemption Act is not applicable*

*Reddy Prasad v. Shankar Lal* (1), *Reddy Annamma v. Ram* (supra)  
(2), *Das Ram v. Raj Kumar* (supra) (3) referred to.

Letters Patent Appeal no. 46 of 1946 against a decision of Master J. in Second Appeal No. 1613 of 1944 decided on 16th May 1946.

The facts appear in the judgments.

*Jagdish Sengupta*, for the appellants.

*S. Nataraj Sahas* and *R. C. Sengupta* for the respondents.

The judgments of the Court was delivered by—

**Mook, C. J.** —This appeal has arisen out of a decree impugned by an application under section 4 of the United Provinces Debt Redemption Act no. XXII of 1946 for amendment of a decree for redemption.

The facts in brief are this on the 16th of January 1946 one Jorlu and his son Kachhu mortgaged a house *para* in dispute to one Ram Sengupta for Rs.246. The mortgage was for possession. On 2nd January 1953

CO.11.2 (1953) 10 40. CO.11.2 (1953) 10 40  
CO.11.2 (1953) 10 40

the two mortgages increased, a simple mortgage in respect to the same house is in-out of the same mortgage for Rs. 708 and explained during that it would not be permissible for the mortgagors to redeem the mortgage of 1880 without paying up the amount due under the simple mortgage of 1881.

The mortgages remained in power until 1880 James and Rachel both died and Rachel's heirs who inherited the property transferred the equity of redemption on the 28th of August 1886 to the plaintiff Mr. Shewry and Mrs. Mahlon. They left a sum of Rs 200 in their hands for redemption of the mortgage mortgage of 1880 and stipulated that the transferee would be liable for payment of whatever amount was owed due under that mortgage. No mention, however was made of the 1883 mortgage. When Mrs. Shewry died a suit for redemption of the mortgage of 1880 the mortgagee relied on the mortgage of 1883 and claimed that before the mortgage of 1880 could be released the plaintiff had to pay the amount due under the mortgage of 1883 as well. This plea evidently found favour with the trial court and was allowed for this Court, by an order dated the 9th of November 1942 with the result that the plaintiffs were required to pay Rs 2442 the amount due under both the mortgages of 1880 and 1883 before the mortgage of 1880 could be released.

In the year 1943 the plaintiff filed an application under sections 8 and 9 of the Debt Redemption Act for redemption of interest allowed to the mortgagee and for amendment of the decree. This application was dismissed by the learned Munsif on the 15th August, 1943 as at that time the amount was not a loan the hotel, by having been transferred by the original mortgagee to the respondent. The defendant had made a declaration

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 Appellate  
 Order  
 by  
 District  
 Judge  
 dated 2.2.48

that they would not proceed against any kind of agricultural produce or person of the agriculturists. But the learned Master held that section 3 of the Debt Redemption Act applied only to a case where the mortgage had been a lien to realise the amount due to him from an agriculturist and not as a lien for redemption filed by an agriculturist. Against the order rejecting the application under sections 3 and 4 of the Debt Redemption Act the plaintiff filed an appeal before the learned Civil Judge of Gorkhpur who after allowing the appeal on the 11th April 1948 and ordered the amount which the plaintiffs were required to pay for redemption of the mortgage. On a further appeal to this Court a learned single Judge dismissed the appeal on the 16th of May 1948 but granted to the defendants leave to appeal. The defendants have now filed this appeal.

It is contended on their behalf that the order passed by the learned Master on the 11th August 1945 was not an appealable order and neither the learned Civil Judge of Gorkhpur nor the learned single Judge of this Court had any jurisdiction to entertain appeals. Reliance is placed by learned counsel on certain observations made in a Full Bench decision of this Court in *Baki Prasad v. Bhadani* (1st 21). In view of that decision in which several other Full Bench decisions of this Court have been considered, it is not necessary for us to discuss the law at any length. That case however has settled the law so far as least as this Court is concerned that an order under section 3 of the Debt Redemption Act refusing to grant a decree is not an order under section 42 of the Code of Civil Procedure. This point was referred to the Full Bench in the case of *Baki Prasad v. Bhadani* (2), *Ram Sarup* (2) and other



order, when an application for amendment was made during the pendency of execution proceedings, the Court had held that the order for amendment of the decree was in order under section 47 of the Code of Civil Procedure.

**THE JOURNAL OF**  
**POST KEYNESIAN ECONOMICS**

The decree for redemptio was passed on the 14th of November 1942. That decree was no doubt appealable under section 98 of the Code of Civil Procedure. The application for amendment of the decree was filed on the 1st May 1943. As the application was dismissed by the learned Munsif the decree was not amended. The Debt Redemption Act makes no provision for an appeal against an order dismissing an application under section 4 of the Debt Redemption Act. In the case of *Sita Ram v. Raj Kumar Lal* (1) the question for decision was slightly different. But the law on the point was discussed whether when a decree was amended under section 4 of the Debt Redemption Act an appeal would lie from the amended decree. The view expressed by some of the learned judges was that the amended decree would be appealable but limitation would run from the date of the original decree and an application under section 4 of the Limitation Act might be necessary when the period of limitation for appeal from the decree on the date it was originally made had expired. Some observations were made in *Badr Prasad's* case that the amended decree in such was appealable under section 98 of the Code of Civil Procedure. In any case, the question whether the amended decree is such as the original decree as amended is appealable is of mere academic interest. Section 4 sub-section (2) provides that the amended decree shall bear the same date as the original decree. An application under section 4 of the Limitation Act would therefore be required unless the

5910 • J. Neurosci., September 24, 2008 • 28(39):5903–5910

100 period of limitation for appeal from the date of the  
101 original decree had not expired.  
102

103 Where, however, no amendment has been made and  
104 the application under section 115 failed and has been  
105 rejected, the order can be appealable only if there is a  
106 law providing for an appeal? It is now well settled  
107 that an appeal is a creature of Statute and unless a right  
108 of appeal is given by some law an order is not appealable.  
109 We have already said that it has been held by this Court  
110 that such an order is not an order under section 11 of  
111 the Code of Civil Procedure. It is not an order which  
112 is appealable under the provisions of section 101 as of  
113 with Order XXIII, rule 1 of the Code of Civil Procedure.  
114 There being no provision for appeal the order passed by  
115 the learned Munsif dismissing the application has, of  
116 course, was not appealable and no appeal lay to the learned  
117 Civil Judge or to the learned single Judge of this Court.

118 By Mr. Justice Jagan, learned counsel for the respondent  
119 State has asked us to treat this case as a civil revision  
120 under section 115 of the Code of Civil Procedure against  
121 the order of the learned Munsif dated the 15th of  
122 August, 1948. It is doubtful whether a Letters Patent  
123 Appeal filed under the power once granted by a learned  
124 single Judge of this Court can be treated as a revision  
125 against an order passed by the learned Munsif. But  
126 even if we were to allow this power the difficulty would  
127 arise that there being no error of no reflection is the  
128 order of the learned Munsif is being set back as given as  
129 a question of law we shall have no jurisdiction under  
130 section 115 of the Code to set aside the order. We there-  
131 fore do not see any reason for granting this request.

132 The result, therefore is that the appeal is allowed  
133 and the decrees passed by the learned single Judge is

also by the learned Civil Judge at Gorakhpur are set aside. The order of the learned Master dated the 15th of August, 1945, therefore, will remain operative.

As the objection as regards jurisdiction was not taken either in the lower appellate court or in this Court, we direct the parties to bear their own costs in all the courts.

(Signed) Allotment

1945  
August  
15th  
at  
Allahabad  
Court

## CIVIL MISCELLANEOUS

Before the Honourable B. Mukh, Chief Justice and  
Mr. Justice Bhargava

SRI RAVI MAHADEO PRASAD (Applicant)

vs

1945  
Aug 15

COMMISSIONER, OF INCOME TAX (Opposite  
Party)

**Indian Income Tax Act, 1922, s. 16 (2) (a).—**Four under-  
takes in possession of a firm for producing business—Hired  
charges paid by them—Whether allowable expenditure—  
Interest received from partners of a firm on amounts  
made to them by firm—Is taxable income in the hands of  
firm.

The hired charges paid by proprietors of a firm in respect  
of a trade undertaken for the purpose of carrying business  
for the firm are not allowable expenditure under s. 16 (2)  
(a) of the Income Tax Act.

**See Kishor Sankar Lal v. Commissioner of Income Tax  
S. P. (2) cited upon.**

The income received from the partners of a firm on  
the amounts made to them after adjustment against  
reimbursement of advances made to them by the firm is taxable  
income in the hands of the firm.



The total due of a sum of Rs 12,212 only to be added back to the sum is

On the application of the aforesaid, the following two questions first have referred to us for our decision.

(1) Whether the hotel charges of the property tax in respect of a car undertaken for the purpose of procuring business for the firm are allowable expenditure under section 14(1) (vi) of the Income Tax Act?

(2) Whether the sums interest received from the partners of the firm as the accounts creditors for their after adjustments against the payments of interest made to them by the firm is taxable income in the hands of the firm?

As regards the first question it is already covered by our decision in *Ramchandra Jodhpuri v. Commissioner of Income-tax, U. P.* (1). We are so satisfied as to come under our view and answer the question in the negative.

As regards the second question, the assessee was a partnership firm of which the five partners were (1) Jagannath Mahadeo Prasad (2) Karna Prasad (3) Han Prasad (4) Chandrajit Mohanlal and (5) Gangadhar Keshavnath. It appears that the first four partners had invested money in the partnership firm on which the firm was paying interest to them. The amount of interest paid by the firm to Jagannath Mahadeo Prasad being Rs 12,185 to Karna Prasad Rs 681 to Han Prasad Rs 4,424 and to Chandrajit Mohanlal Rs 1,502, the total amount thus paid as interest to the partners on the capital borrowed from or advanced by them came to Rs 18,792. It appears from the accounts that the partners withdrew or borrowed money from the firm on which they were charged interest by the firm. The amount of interest thus paid by Jagannath Mahadeo Prasad was Rs 5,685 Karna Prasad Rs 1,633 and

1948  
1st Part  
Muzumdar  
Prasad  
v.  
Commissioner of  
Income-tax  
U. P.  
(1948) 17 F.T.R.  
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that the amounts could not be deducted as carrying profits or gains of the partnership. The relevant portion of section 1361(d) is as follows:

(2) such profits or gains shall be computed after making the following allowances, namely:

(2) in respect of capital borrowed for the purpose of the business, profession or vocation the interest of the interest paid

Provided that no allowance shall be made in the case of a firm for any interest paid as a member of the firm.

[illegible]

nothing in clause (iv) of sub-section (2) shall be deemed to authorize (B) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm, to any partner of the firm.

It is thus clear that the Service was not required to show that the interest paid by it to its partners for money borrowed from them should be treated as expenditures, and should be allowed to be deducted in the case of computation of profits. There is however nothing in the Indian Income Tax Act which excludes from the computation of the income of the partnership an interest paid as interest by a partner for money borrowed by him from the partnership.

One argument has been drawn to a decision of the Indiana High Court in *Probstman-Sperry v. Korte*,<sup>10</sup> *Probstman-Sperry v. Korte* (II) and reliance has been placed on behalf of the service on the observation in that judgment that when the income of a partnership is earned to tax under the Income Tax Act when it truly is paid is no longer less than the income of individual partners, and thus a partner is entitled to each

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under section 41 for the refund of the tax upon his share if his total income for the year is below the taxable minimum. These observations, however, relate to a differently different set of circumstances. In that case the question was whether the appellant was an agriculturist entitled to claim the benefit of an Act passed for the benefit of agriculturists and a person was not deemed to be an agriculturist if he had been assessed as income tax under proviso (A) to section 2 of Act IV of 1928. The appellant in that case was a partner in a printing factory and was entitled to one fourth share of the profits. The factory was assessed to income tax for its profits in the year 1927-28. The point raised was whether the appellant could be said to have been assessed to income tax as the factory, of which he was a partner had been assessed to income tax.

The case of *Rev. J. B. Amarchandani Chattraj* v. *Commissioner of Income Tax, Madras* (3) was also relied upon. That was a case in which the question arose whether a partner could undertake the liability to pay the losses incurred by another partner and claim to set it off against his profits from other business. Another point in the case was whether the losses incurred by the other partner could be treated as paid debt in the year in question. While dealing with these points their Lordships of the Judicial Committee said:

From section 41(f) of the Indian Income Tax Act it would seem that the Indian Legislature thought it necessary to anticipate any possible apprehensions that a partnership by being recognised as a registered firm within the meaning of section 25 of the Act might be treated as a separate person, so as to make it seem as to prevent a partner's share of loss being set off against his individual profits or gains. In their Lordships' opinion whether a

(3) 1939-1 P.F. 25



firm is regarded as a registered partnership does not obstruct or defeat the right of a partner to an adjustment on account of his share of loss in the firm whether the set-off be against other profits under the same head of income within the meaning of section 6 of the Act or under a different head (in which case only, need recourse be had to section 24(1)).

That  
the  
set-off  
does not  
defeat the  
right of  
partner to  
adjustment  
of  
profits  
against his  
share of  
losses in  
income tax  
under C. 1

We do not see how these observations help the assessee. In neither of the two cases has it been held that it is not possible for a partner to borrow from or lend money to a partnership. As a matter of fact section 25 of the Indian Partnership Act (IX of 1932) provides that—

Subject to contract between the partners—

(f) a partner making, for the purposes of the firm, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent per annum.

A partner, therefore, is entitled to charge interest under the Partnership Act in such case as may be agreed upon between the partners and in the absence of an agreement, six per cent per annum for all sums advanced by him beyond the amount of capital he has agreed to subscribe. The provisions of the Income Tax Act quoted above make it clear that the assessee firm is not entitled to claim a deduction for any interest paid by it to its partners. If the partner has borrowed money from the partnership it only means that he has directed to his own personal use a part of the capital which might have been retained for business purposes and has agreed to compensate the partnership by paying interest for it. There appears to be no reason why the interest paid by the partner should not be treated as profits made by the partnership.

# THE NEW PLAN FOR THE FUTURE OF THE NATION

In the case before us the Appellate Associate Circuit court and the Tribunal tested the case of a partner who had lent money to the partnership and had also borrowed money from it as a case of double entry, and treated the balance due to the "wrong" partner borrowed by him from or lent by him to the partnership in the case might be and then has my mode has shown that it allowed all amount paid to the partnership to mark a partner for reason of the possession of certain [REDACTED] and [REDACTED] squared above while in the case of a partner who had borrowed money that he had lent the same amount paid as received was treated as nothing.

The appellate Appointments Commission and the Tribunal then invited the witness into the hall and returned to the ground section as in the affidavit.

The interest rate, per, the cost of the reference, which the owner is \$500.

[illegible]

**FULL-RANGE CAPILLARY CIVIL**

*Before the Honorable J. Maki, Mr. Justice Sharpson  
and Mr. Justice Mary Chender*

[illegible]

### FAST SALT FOR WATER TREATMENT

**East Pass-Portage** East and Upper—Plowright and co. purchased—ad. advance credit for to be paid by the plaintiff appellants—Court Pass Air 1970 (as amended by L. J. 1981 R22 of 1980), a T with a fee of 1000000.

The study brought a positive view in respect of a large clothing company that doesn't exploit poor producers of fast-fashions and paying a cost for its one-fourth value of the stock market.

Response Category	All respondents	Nonusers	Users	Nonusers who use
Strongly agree	10%	5%	15%	10%
Agree	40%	35%	45%	40%
Disagree	30%	40%	25%	30%
Strongly disagree	20%	20%	15%	20%

Held: that since on the findings in the trial court, by 2-10-11, the plaintiffs were not in possession of their share claimed as the persons and the plaintiffs have failed to establish the value of their share before the appeal could be set aside for remitting an award.

The defendants are entitled to the costs of the appeal, and the costs of the trial.

Costs in default.

Second Appeal no. 285 of 1945 from a decree of B. N. Kishore, District Judge of Sagar, dated 28th March 1945.

The facts appear in the judgment.

[This case was originally heard by Kishore, J. who so far as the statement is concerned the matter is a Full Bench for decision by the following referring order]

Kishore, J. —The report as to court the award is a decree for partition. The plaintiffs claimed that they were in possession of a portion of the property of which they claimed partition. The defendants denied their possession and set up their own possession. The trial Court held that the plaintiffs were not in possession. It also decided other points against the plaintiffs and dismissed their suit. There was an appeal but that was also dismissed by the learned District Judge of Sagar on the same ground. The plaintiffs have now come up as second appeal and they have again raised the question of possession. The other points that were decided by the trial court below, that the plaintiffs are not in possession and it is also a fact that their title is no co-shareship of the property is denied, therefore they should be made to pay an amount equal to the full value of their share and not only an one quarter of the value as they have done in the courts below. The learned advocate for the appellants relies on *Perumthurai*

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*See v. The General Pardon (1)*, in which it has been held that when the same matter is well involved in the appeal the appellate court may be called upon to make good its deficiency in court for till the decision of that matter. On the other hand the learned Additional Judge is in the same Court as in *Attorney General v. The Pardon (2)* for the contrary proposition. The last mentioned case is no doubt in conflict with the first mentioned decision and does not settle the matter. Since the conflict exists between two Bench decisions and there is no decision which may be held to have settled the point which is of considerable importance, I consider that the matter should be placed before a larger Bench consisting of at least three Judges to set the controversy at rest. The papers may advantageously be placed before the Hon'ble the Chief Justice for the consideration of such a Bench.

*See Attorney General v. The Pardon (3)* for the appeal.

The Junior Standing Council (B. V. Roy) for the State

May 1954, 1. — This is a court for matters in a second appeal by the plaintiffs.

In order to appreciate the questions of court for raised before it is necessary to state a few facts. The plaintiffs brought a partition suit in respect of a house in which they claimed a moiety share. It was alleged in the plaint that the plaintiffs were in joint possession of the half share ever since its purchase in the 11th January 1917 from the father of the defendants for a sum of Rs 1,500.

The share was contested by the defendants' predecessors. They claimed the fact that the plaintiffs were co-owners of the house. They further claimed that the plaintiffs were in possession of the share claimed by

them. The question whether the plaintiffs were in joint possession of the house was the subject matter of issue no. 5, which ran thus:

Are the plaintiffs in possession of the house?

If not what is the effect?

Both sides led evidence on this issue. On the evidence produced in the case the trial court held that the plaintiffs had not established their joint possession of the house.

On the question of title also the trial court held that the plaintiffs had failed to establish that they were co-owners in the property in issue.

Dissatisfied with the decision of the trial court the plaintiffs went in appeal before the District Judge. If Sanyal was dissatisfied the appeal and obtained the full right of the trial court.

The plaintiffs have now come up in second appeal. On the presentation of the memorandum of appeal the Senior Reporter of this Court made a report about the deficiencies in counsel fee not only to this Court but in the two courts below also. In the report it was pointed out on the basis of the findings of the two courts below that as the plaintiffs were not in joint possession of the house and as the title to the house was also denied the case falls under the second part of section (a) of the court fee Act which requires the payment of ad valorem court fee on the full value of the share claimed. Since the plaintiffs had paid court fee on one fourth value of the share claimed under the first part of sub-section (a) of section 7 a deficiency of Rs. 4845 was found due against the plaintiffs as the most deficiency possible for them in the three courts.

When the report was placed before the Taxing Judge of this Court it was agreed on behalf of the appellants

1994  
Sanyal vs. Sanyal  
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Sanyal vs. Sanyal





194 provision in the Court Fees Act which was inserted by  
 (1882) 45 the L. F. Amendment Act XIX of 1881.

195 As regards the general rule that the court fees must be  
 (1882) 45 then decided in, is the court fee payable on the allega-  
 tion and prayer in the plaint it seems to us that there  
 (1882) 45 is a certain amount of misapprehension as to the true  
 meaning and real scope of this general rule. It is there-  
 fore necessary to consider the real import of this general  
 rule that the court fee should be made payable on the  
 allegation and prayer as contained in the plaint.

As a summary of the law of court fee will reveal  
 that when a plaint is presented, two questions naturally  
 arise for solution. In the first place, the plaint has to  
 be examined to find out the real nature of the suit  
 that is, to see up to under which of the several categories  
 of suits mentioned in the Court Fees Act the  
 plaintive can file. This is what is generally called  
 the classification of the suit in the first instance. After  
 this is done, the next stage is to find out the relevant  
 provision in the Court Fees Act for the purpose of com-  
 putation of court fee. No difficulty arises in those  
 classes of cases where a fixed fee has been provided in  
 Schedule I; but if a suit is of the category where no  
 relevant court fee is leviable, as in the present case,  
 the court will proceed to value the subject-matter ac-  
 cording to the rules for computation as set out in the  
 various provisions.

Coming back to the question of having regard  
 for the appellants, the general rule that the court fees  
 have to be decided in, is the court fee payable on the al-  
 legation and prayer in the plaint is correct, only in this  
 sense that the general rule is enacted primarily for  
 the purpose of classification of suits in other words  
 in order to find out the nature of the suit and  
 the remedy is being sought, the court must ascertain



The allegations and pleas claimed on the part of the  
 single version (the 1st or 2d) allegations made in the  
 plead which determine the nature of the case. In  
 making the statement about the nature of the case  
 it is not permitted, as in the 1st or 2d, the allegations made  
 in the various statements. See *Field v. McKee*, 10  
*Ark. Law Reports* (1911). The general principle which is  
 a rule of procedure is followed with in the matter of  
 determining the nature of the case and for that pur-  
 pose attention must be confined within the four corners  
 of the allegations in the plead. Even in the matter  
 of classifying the case the general rule is applied where  
 it appears on the construction of the plead that the  
 real trial sought is something different than what is  
 asked for in the designated form. The court as it then  
 arises and upon the outside form and in regard  
 adopted in the plead.

1911  
 10 Ark. Law  
 Reports  
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In the matter of determination of course the rules  
 and principles apply, it must have no rule except as  
 it has in determining the nature of the case. After  
 the nature of the case has been determined the court  
 has to find out whether the plaintiff has correctly  
 valued the relief for purposes of jurisdiction in the case  
 can laid down in section 1 of the Court Fees Act. This  
 process also involves the examination of the plead  
 allegations and if there is nothing to indicate other-  
 wise the plaintiff's valuation prima facie is accepted as  
 correct. Although the court would accept jurisdiction  
 paid in the first instance as correct but if it happens  
 subsequently that the allegation of fact on the basis of  
 which the court has now composed is not correct then  
 it is within the power of the court to demand additional  
 court fee before the judgment is pronounced. Section  
 1 of the Court Fees Act directs that no document



the comparison, the proper counter. The court let stand by the plaintiffs was accepted as correct because the plaintiffs had asserted in the plaint that they were in joint possession of the property in the nature of their share. In the usual usage it could not be said with any certainty whether the allegation was false or correct. The defendants having denied this assertion of the plaintiffs a specific issue as to the question of joint possession of the plaintiffs was framed in the case. The Court after evidence was gone into recorded a finding that the plaintiffs were not in joint possession of the property. In view of this finding it was open to the first court to demand satisfaction under the second part of sub-section (1) A) of section 7 of the Court Fees Act being a pre-conditioning final order in the case. It appears, however, that it escaped the notice of trial court to demand satisfaction under the second portion of the aforesaid sub-section. When the matter went up before the first appellate Court it appears that the point that the plaintiffs should be asked to pay the court fee under the latter part of sub-section (1) A) was not pointed out and therefore no court fee was charged in that court also. In view of the findings of the two courts below it cannot be disputed for the purposes of court fee that the plaintiffs were out of possession of their share at the date when they brought the suit and as such the amount should have been taxed according to the valuation prescribed under the latter part of sub-section (1) A) of section 7.

Learned counsel for the appellants has relied upon the general proposition of law that possession of one co-sharer is in the eye of law, the possession of all the co-sharers in the property. Even this presumption is not available to the plaintiff, as the two courts below have found against them on the question of their title to a share in the house. We do not however consider it proper to enter into this question at this stage

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hearing that will be a matter for consideration when the next appeal comes up for hearing on merits. At present for the purposes of certiorari, we must accept the finding of the two courts below which is to the effect that the plaintiffs were out of possession of their share at the time when the suit was brought.

What remains the second question whether the defendant is entitled as reported by the office can be determined before the appeal is decided. It has been urged before us that the question whether the plaintiffs were in joint possession of their share or not, at the time of the suit is a question which will have to be decided on appeal and until the appeal is decided on merits the appellants should not be asked to pay the additional court fees. We find a difficulty to accept this contention. Learned counsel for the appellants has relied on the following observation in *Prasanna Das v. Mangalad Forest* (1):

The plaintiff was not liable to make good the alleged deficiency in the court fee until the question of joint possession was not finally decided on appeal.

It may be pointed out with advantage that the above suit was decided before the Court Fee Act was drastically amended by the U. P. Amending Act XIX of 1958 and as such the above remarks cannot be of any assistance in deciding the question before us.

The point which has been raised in this case came up for decision before a Bench in *Mansoor Das v. His Pooled* (2). The facts in that case were on all fours with the facts of this case. It was argued that the resolution of the difficulty should be postponed as the question whether the plaintiffs were in joint possession or not was a matter to be decided on the appeal. The

(1) AIR 1957 SC 100. (2) AIR 1972 SC 100.

Learned Judge rejected the contention and made the following observations:

The decision of the lower court on the question of possession for the purpose of court fees under the circumstances must be regarded as *prima facie* correct and the appellants must pay the deficiency according to the full value of the dues which they claim on partition.

2004  
Section 102  
of  
Rent Control  
Act, 1948  
is  
not  
applicable

The appellants were thereupon called to make up the deficiency on the memorandum of appeal. In our view the law was correctly laid down in this decision.

The prohibition against the reception of a document which is not properly stamped is contained in sections 1 and 5 of the Court Fees Act. The result of this prohibition is that unless a plaint or a memorandum of appeal is properly stamped, no court can proceed to the consideration of the merits. To enable the court to consider the appeal on merits the memorandum of appeal must be a document which is properly stamped. It follows, therefore, that the question whether a memorandum of appeal is properly stamped or not must be decided first before the appellants can claim a hearing on merits. Apart from this the levy of court fee is a condition which the State requires a litigant to pay before his case can be heard and decided. If the memorandum of the appellants is unaccepted there is no need to grant a decision on merits without payment of proper court fee. We might usefully refer to clause (1) of section 4 of the Court Fees Act which runs thus:

If a question of deficiency in stamp duty in respect of any plaint or memorandum of appeal is raised in an appeal mentioned in section 24 A

It is  
therefore held  
that the court

the court shall, before proceeding further with the suit or appeal, cause a hearing to be held to determine whether the debt has been paid or not. If the court finds that the debt has been paid, it shall adjourn the proceedings in the case until such time as the plaintiff or the appellant is able to make good the deficiency which such time is to be fixed, and in case of default shall reject the prayer or intervention of appeal.

The clause is concerned with a case in which the debt is not the burden of the court to decide all questions of fact, but is a preliminary question before, coming into the court in the first place. The question of whether the debt has been paid is to be decided on the basis of facts as they stand at the time when the intervention of appeal is filed in the court. The decision of the two courts below that the plaintiff was never in great pecuniary straits must be accepted as correct, the leaving the payment of the debt and in view of the finding of the courts below, it cannot be decided that the debt is not paid by the plaintiff. The court of appeals in the first instance is correct, and the deficiency must be made good first before the intervention of appeal can be admitted.

We therefore accept the report of the Group Reporter and direct the appellants to pay the deficiency in court fee of Rs. 100-0 within three months from now. If the deficiency is not made good within the time allowed, the intervention of appeal shall stand rejected.

REMARKS. [—] I have had the benefit of reading the judgments of my brother HAN JARVIS, J. and I am sure we are with him but I would like to add a few comments on the question of applying the general rule that the courts must leave their decision as to the court fee payable on the application and prayer in the plaint. It is obvious that the general rule can only be applied

to claim either the language of the Court from *Act* seems not expressly to explicitly require that besides the a.s. ground and parties in the *pleas*, the court be enabled to distinguish on other considerations also. Section 2(1)(d) of the Limitation Act which prescribes the limitation to suing for partition for two years.

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There is the general rule that the court has a power, according to one-fourth of the value of the plaintiff's share of property, but this is qualified by the second special rule that the court has a power according to the full value of such share if on the date of presenting the *pleas*, the plaintiff is not of possession of his property of which the claim is to be a representative or co-owner and his share is to be representative or co-owner on such date is claimed. To apply one second clause, the court has to go into the question whether the plaintiff is or is not, out of possession on the day of presenting the claim, and whether his claim is to be a representative or co-owner on such date is claimed. It is obvious that the legislature could not have intended that on these points the plea taken by the plaintiff must be accepted truthfully for purpose of working out the valuation to determine the quantum payable to him. If that were so the plaintiff in every case could make the claim effective by pleading on the *pleas* that he is in possession or by alleging that his claim is to be a representative or co-owner is not derived. The language is difficult whereas that it is not the plaintiff's work on on the part which must be accepted. In such cases therefore though the court has not enough to be accepted as correct according to the allegations made by the plaintiff on the *pleas*, the court is required to refuse its opinion and ask for the requisite court fee under the second part of the clause on coming to the view that the plaintiff is not of possession of the property and that

claim to be representative of society is denied. The general rule of maintaining the valuation, for purposes of taxation, from the acquisition and prior to the planning stage, therefore, in such cases, be modified and I agree with my brother Hans Swinton, J. about the price. Sure that the courts should adopt in order to do so.

Figure 6.1 will appear with every mailing in the next

**Over the years**



## CIVIL MISCELLANEOUS

Before the Honorable B. Mook, Chief Justice and  
Mr. Justice Bhargava

SINGH ENGINEERING WORKS, KANPUR  
(Appellant)

1955  
February 2

COMMISSIONER OF INCOME TAX  
(Respondent Party)

*Income Tax Act, 1922, s. 34 (2) order passed by  
Appellate Assistant Commissioner under Income Tax  
Act is found to follow the directions given by the Com-  
missioner in making fresh assessment—Principle not stated  
by Income Tax Officer—Further Income assessment and  
fresh order necessary or not—That judgment assessment  
by an Income Tax Officer—Interference by higher courts—  
Principle to be followed*

When an order is passed by the Appellate Assistant Com-  
missioner under sub. (2) of section 34 of s. 31 of the Income Tax  
Act relating to the original assessment an Income Tax Officer  
is bound to proceed in accordance with the directions given by  
the Appellate Assistant Commissioner and any material ap-  
propriate property situated in it which had not been dealt in his  
assessment can be taken into consideration in making the  
fresh assessment.

A notice issued by the Income Tax Officer in the first assess-  
ment proceedings is binding on the assessee in respect of his  
income. The Income Tax Officer and the Income Tax Officer  
are bound to issue a fresh notice calling for a fresh assess-  
ment from the assessee.

Interference by the appellate or other higher courts with the  
exercise of the first judgment by an Income Tax Officer must be  
on the same principle on which appellate courts usually inter-  
fere with the exercise of discretion in a trial court.

Case law discussed

Civil Miscellaneous no. 100 of 1949

The facts appear in the judgment.

G. T. Pathak for the appellant.

The Junior Standing Counsel (Gajash Shrivastava) for  
the respondent party.







not suggested that proper inquiries were not made and the learned counsel has not been able to explain on what basis he suggests the material which was on the record at the time when the assessment which had been set aside was made must be treated as non-existent and must not be taken into consideration. The Appellate Assistant Commissioner had pointed out the certain photographic exposures on which the Income-tax Officer had relied were not admissible as evidence for want of proof. The Income-tax Officer was no doubt not entitled to refuse the material without further proof and it is not suggested that he did. There is no reason why the other evidence which was properly admitted and placed on the record and to which no exception had been taken should be deemed to be non-existent. Therefore our answer to the first question is that the Income-tax Officer is bound to proceed in accordance with the directions given by the Appellate Assistant Commissioner of Income-tax and any material on the record properly admitted and which had not been held to be inadmissible can be taken into consideration in making the fresh assessment.

As regards the second question it is not suggested that the assessee had no opportunity or was denied the opportunity to give an explanation. What is urged is that fresh money should have been given and a fresh explanation called for. We do not think that any such duty was imposed on the Income-tax Officer under the order of the Appellate Assistant Commissioner. The assessee knew of the proceedings before the Income-tax Officer; the assessee had been asked to explain the absence of the account books for a part of the period; the assessee had furnished an explanation; the assessee knew that the explanation furnished had been rejected; the assessee, no doubt,

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could again press for its acceptance and if the answer was to furnish any further explanation, there was nothing to prevent the answer from doing so. It is not suggested that the Income-tax Officer refused to take into consideration any explanation offered by the answer. We see no reason for holding that the Income-tax Officer was bound to issue a fresh notice calling for a fresh explanation when the answer had already offered an explanation before and did not offer any other explanation afterwards. Our answer to the second question is that the previous notice issued by the Income-tax Officer does not become inoperative and the Income-tax Officer is not bound to issue a fresh notice calling for a fresh explanation from the answer.

Coming to the third question we have already said that the Income-tax Officer had made the assessment under section 23 (4) of the Indian Income Tax Act. The Income-tax Officer had set out the basis on which he had made the best judgment assessment. The matter was taken up before the Appellate Assistant Commissioner of Income-tax who in a very well considered order gave reasons for upholding the assessment arrived at by the Income-tax Officer. The reasons given by him are mentioned in the third paragraph of his order dated the 22nd of February 1947. In making his best judgment assessment the Income-tax Officer had taken into account a sum of Rs 48,000 which was an unexplained deposit in the proprietor's account. A bank draft for Rs 50,000 drawn on the Central Bank of India, Kanpur, was sent from Amritsar and it was suggested by the answer that this sum of Rs 48,000 was not really any trade receipt but was a part of the windfalls made in the previous financial year which had remained unspent in its hands and which was remitted from Amritsar to Kanpur. The



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The Income-tax Appellate Tribunal pointed out that if the assessee had this large sum of money in hand there was no reason why the assessee should have withdrawn smaller sums of money between the dates 25th March, 1951 and 15th February, 1952. The Tribunal has further pointed out that, during that period, the assessee purchased a house at Shimoga for Rs 40,000 and withdrew that amount for that purpose and that no account had been furnished about the construction of any house at Anantpur. For these and other reasons given by the Tribunal, it rejected the explanation of the assessee. After having rejected the explanation the Tribunal said:

The first question remains that the cash which lay on the appellant of proving the source of the cash credits and connecting them with the withdrawal has not been discharged by him. We, therefore, hold that he had failed to account for the cash credits of Rs 59,000 appearing in his account. It follows as a presumption of fact that they represent the profits accruing to him out of business. We, therefore, agree with the Income-tax authorities in the addition of this amount for the purpose of computation of the assessable income of the appellant.

In deciding the case in the manner in which it did, the Tribunal followed the same line as was followed by the Court of Appeal in *Imperial Products Ltd v Dadd* (M M Inspector of Taxes)(1) where the assessee company showed in its books of account an amount of £1,142 12s 7d standing to the credit of Director's Current Account, the director in question being Mr Alfred Lee, who explained how he came by that money which



he said he had advanced to the company. His explanation was found to be false and the learned Judge (ATKINSON, J.) observed as follows:

The Commissioners, therefore, had the two main contentions before them, and said: "We do not believe Mr. Lee and we considered the appellants company had not discharged the costs that lay upon it of displacing the assumption. I was bound to take the facts—I cannot escape from it that they must have directed their attention to the two issues which had been raised by the appellants company. They must have considered whether those sums were lent to the company or whether they were not, and I am quite satisfied that they came to the conclusion that the alleged loans were wholly fictitious. They considered the whole story was untrue and that the £1500 was really part of the taxable profits of the company."

The learned Judge held that there was no basis for the agreement with the conclusion arrived at by the Commissioners. When the matter went up before the Court of Appeal the Court of Appeal treated it as a pure question of fact and held that on the evidence of Affidavit Lee having been rejected it having been believed that Mr. Lee was not in a position to advance the money no conclusion other than that arrived at by the Commissioners was possible.

We may note that in the statement of the case it was overlooked that this was a decision by the Income Tax Officer under section 216 of the Indian Income Tax Act. It does not appear from the appellate order of the Tribunal that it was called upon to decide what the material on the basis of which the Appellate Assistant Commissioner had decided the appeal before him, was or was not sufficient for the conclusion arrived at by

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was. The only argument that seems to have been advanced before the Tribunal, was whether the reply given by the witness should or should not have been accepted. After having rejected that argument the Tribunal held that the case lay on the appellant, that is the burden of proving the source of the cash credits and connecting them with the cash demand but the witness had not discharged that onus.

Arguments have been advanced at some length on the question of onus. We may however point out that the question whether the onus lay on the answerer of proving the source of the cash credits or whether it was for the Income Tax Officer, to establish on the basis made before him, that that was taxable income has not been referred to us for decision. The Tribunal has referred to us a question which, as far as we can see does not arise at all from the appellate order, is a case where the assessment was made under section 23 (4). The question is

Q.—Whether there was any material before the Tribunal to justify the finding that the cash credits in question represented the assessors income liable to assessment?

The proper question, in our minds which can arise is an assessment under section 23 (4) is

Q.—Whether in the circumstances of the case the Income Tax Officer had made a fair estimate of the assessors income and whether his decision was reasonable?

Mr. Patrick on behalf of the assessors has urged that there is no material difference between an assessment under section 23 (3) and an assessment under section 23 (4) of the Income Tax Act and that in both cases the Income Tax Officer must have sufficient material on which he can base his finding. The point is

however, covered by high authority and we need only cite the following cases in which the difference has been clearly pointed out:

In *Abdel Sami Chanthary v. The Commissioners of Income Tax, District 11*, a Full Bench of the Rangoon High Court presided over by the learned Chief Justice in *Ariffin Poon* pointed out:

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The hypothesis on assessment under section 24 (f) must be made upon adequate materials. It is a mere estimate and if it is made by the Income tax Officer bona fide and to the best of his judgment (which only means as best as he can in the circumstances) the officer who has not chosen to make an account so that the amount of profits may be strictly determined cannot complain if a random assessment is made upon him by the Crown.

The learned Chief Justice relied on the judgment of the Lord President in *Mayerstein and Company v. Union (Surveyors of Taxes) (No. 2)* and held as follows:

When it is said that a tribunal is invested with a judicial discretion what is meant is that in certain proved or admitted circumstances it has been given the power to act or not to act in a particular way. Such a discretion no doubt may be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself.<sup>1</sup>

In the case of *Commissioners of Income Tax, Central and United Provinces v. Easterns Industries (No. 1)* the Lordships of the Judicial Committee approved of the above doctrine. Dealing with the matter of assessment under section 24 (f) of the Act the Lordships pointed out that in the case before them the assessee did not produce his account books.

<sup>1</sup> [1958] 2 All E.R. 388.

<sup>2</sup> [1958] 2 All E.R. 390.

<sup>3</sup> [1958] 2 All E.R. 390 at 391.

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Discussion**  
 6. **Conclusion**  
 7. **References**  
 8. **Appendix**  
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the Income-tax Officer took into consideration the local report that the respondent's money-lending business was extensive and included the purchasing of dals at large profit to himself and that as a result of local enquiries the Income-tax Officer had found that the assessee had filed numerous statements to the effect of papers and was reported to be the richest man in the district. In answering the question no. (v) which was as follows:

(7) Is there evidence to substantiate the Income tax Officers' statement in the last para. graph of the order saying that legal expenses prove that the taxpayer made no net worth less taxable income of a half of amount?

**Abstract**

As in (v) no evidence was necessary. The officer had merely to estimate what he thought the income for purposes of movement. If any returns were given (as in the present case) it was merely to show that the estimate was not arbitrary.

At page 104 of the judgment that Lordships made the well-known observations which are now deemed to be decisive of the issue and which run as follows:

The officer is to make an assessment, to the best of his judgment, against a person who is on defense as regards supplying information. He must not act dishonestly or wantonly, or too severely because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper degree of assistance and for this purpose he must, they Lordships think, be able to take into consideration local knowledge and reputation as regards the witness's character and his own knowledge of previous records, be and assessments of the



THE  
HONORABLE  
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OF THE  
MADRAS COURT  
IN  
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OFFICER  
V.  
THE  
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had been guilty of deliberate default. We do not think there is any real difference between the decision of these Lordships of the Judicial Commission and the observations made by the learned Chief Justice of Madras. As a matter of fact, the observations of these Lordships of the Judicial Commission were binding on the Madras Court and the Madras Court could not have gone against the decision of the Judicial Commission. The Judicial Commission did not lay down that there need be no material. They pointed out that the Income tax Officer has to come to an honest conclusion and the honest conclusion may be on some basis. There is a difference between the recording of a finding on a point on the evidence produced by the parties and a case where, in the absence of such evidence, the Income tax Officer is left to make such enquiries as are open to him and to make an honest and reasonable conclusion. At the time when these Lordships of the Judicial Commission decided the case of *Commissioner of Income Tax, Central and United Provinces, v. Laxminarayan Bahadur* (1) an order under section 23 (4) was not appealable and it was therefore not necessary for the Income tax Officer to give any reasons for his conclusions. Now that the section has been amended and the order has been made appealable, probably it would be necessary for the Income tax Officer to indicate before the assessment is made and on appeal the burden must be on the tax authority to show that the Income tax Officer had either acted unreasonably or that his order was not reasonable and was erroneous.

Accordingly, to the appellate or other higher court, with the benefit of the best judgments by an Income tax Officer must in our opinion be on the same principle.

appeal will check appellate courts usually, interfering with the exercise of discretion by a trial court. Their Lordships of the Judicial Committee in *Reichman*, or *Reich*, v. *Price* (1), said

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The Appellate Bench decided adversely to *r* and it was urged in argument against interference with the decision that it is opposed to sound practice for an Appellate Court to substitute its decision for that of the court from which an appeal has been preferred. The purpose of the argument is undoubted. It cannot be said that the court acted oppressively or in disregard of any legal principle in the exercise of its discretion.

In *General v The Tolmarden Football Club* (1977) *Company (Limited)* (2) Morris, L. J. said

This Court lays down for itself the rule which I think is the right one that it will not interfere in the discretion unless it thinks the case is perfectly clear.

Morris, L. J. in the same case remarked

Assuming as I do now that there may be an appeal, when ought an appeal to be allowed?

It ought to be allowed in a very strong case that is where otherwise according to Jones, L. J., justice would be done.

The ~~value~~ of judicial review depends on appeal and there should be no interference with the order unless it is shown to the satisfaction of the appellate court that the discretion has been exercised oppressively or unfairly or unreasonably. The ~~value~~ of the appellate court in that respect must rest on the power challenging the exercise of the first judgment by





## CIVIL MISCELLANEOUS

Before the Honorable B. Mohit, Chief Justice and  
1st Justice Bhagpur

MITHOO LAL TEE CHAND (Applicant)

THE  
TREASURY

THE COMMISSIONER OF INCOME TAX  
(OPPOSITE PARTY)

*Income Tax Act, 1918 s. 10(4)—Circumstances of receipt  
revealed by account as approved from the books of account—  
Burden on account to explain account—Receipts whether a  
revenue receipt—Question of fact to be decided on material  
available*

If from the books of account of an assessee it appears that  
during the relevant revenue period he had received certain  
sum of money, the burden is on him to explain from where he  
got the same.

Where an assessee claims that a receipt—viz. bank deposit—  
is not taxable income, the burden is on him to explain that  
it does not constitute taxable income. If he explains, it is for the  
Tribunal first to record a finding as to whether or not the  
receipt is taxable income. If it is found to be taxable income, the  
burden is on the assessee to show that it is not taxable income.

A question whether a receipt is a revenue receipt or a  
capital receipt is a question of fact. It is a question of  
fact which has to be decided on the material available. In  
such case the revenue authorities are entitled to take into  
consideration the fact that the explanation given by an assessee  
is either unreasonable or a false and that to consider whether  
the explanation given is the only material available along  
with the documents would enable them to hold that  
the amount so received represented the undivided amount of  
the business in the year in question. The mere fact that an  
explanation of the amount is satisfactory does not  
necessarily lead to a conclusion that the receipt is a revenue  
receipt taxable as income.

Case law discussed

THE  
HONORABLE  
JUDGE  
OF THE  
COURT  
IN THE  
CHIEF  
JUDGE  
OF THE  
COURT

Civil Miscellaneous no. 5 of 1950

The facts appear in the judgment

© J. Parikh for the applicant

The Joint Standing Council (English language) for the opposite party.

The judgment of the Court was delivered by—

MAJUMDAR, C. J. —This reference arises out of three cases, two of them relating to income tax assessments for the years 1945-46 and 1946-47 and the third to avoid preferential tax assessments for the year 1946-47. The assessee is a Hindu undivided family which carries on business in grain, cloth, commission agency, speculation, etc. The method of assessing is given in the assessment orders, as mentioned. The relevant sections passed for the assessment year 1945-46 was from 15th of October, 1944 to 31st November, 1944. The Income tax Officer found a cash deposit of Rs. 5,000 in the capital account of the assessee in the name of Sasipal Saray Ram entered on the 27th of October, 1944. When he asked the assessee from where the amount had come the assessee stated that it was a part of the amount received out of the withdrawal of Rs. 10,000 on the 15th of October, 1944. For the assessment year 1946-47 the relevant income year was from the 15th of October, 1944 to the 4th of November, 1945. On the first day, i.e. the 15th of October, 1944, there were three credit entries in the capital account: a sum of Rs. 20,000 in the name of Sasipal Saray Ram as having been received from him; another sum of Rs. 20,000 as having been received from Subram Saray and a third sum of Rs. 5,000 as having been received from Dhanam Das. Sasipal Saray Ram, Subram Saray and Dhanam Das are all members of the Hindu undivided family.

The explanation given by the accused was that Sarayal and Saray Ram had withdrawn a sum of Rs. 50,000 on the 18th of September 1938 and two sums of Rs. 10,000 and Rs. 5,000 were respectively withdrawn by Subashan Das and Biharan Das on the 18th of July, 1940 and that it is these three sums that had been brought back and redeposited on the 17th October, 1941. The explanation given by the accused as regards these three sums was rejected. The Tribunal pointed out that the accused could not have kept such large sums of money lying idle for such long periods and the accused must have utilised the amounts withdrawn to make other profits; that the accused carried on business on a large scale and it was not expected that the accused would instead of receiving these large sums let them remain idle; that it was not believable that all these sums would be kept at the family house at Jaidham where only women and servants resided; and that the accused had bank accounts and it was not likely that if the money was withdrawn and not utilised the money would not be put back in the business or deposited in the bank and would be allowed to remain unproductive in the hands of the vulgar ~~people~~ of the family. The Tri-

that  
 Sarayal and  
 Saray Ram  
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 withdrawn  
 Rs. 50,000  
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 on the 17th October,  
 1941.

The Tribunal observed that if the sum of Rs. 50,000 withdrawn by Sarayal Saray Ram on the 18th of September 1938 (and not 18th) as mentioned by the Appellate Assistant Commissioner) had remained undeposited all in the hands of the accused, was no reason why on the 18th of July 1940 he should have withdrawn from business another sum of Rs. 50,000 and deposited Rs. 5,000 out of the latter sum on the 18th of November, 1941 and the sum of Rs. 50,000 not till the 17th of October 1941. We have no hesitation therefore in agreeing with the Tribunal that there was sufficient material on which the Tribunal could hold that the explanation given by the accused was false.



groups all these cases. We are, however, inclined to agree with Sir Jagdish Tewari that the cases have to be grouped in the manner suggested by him.

The relevant portions of sections 10A of the Excess Profits Tax Act, read as follows:

10A(1).—Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected was the avoidance or reduction of liability to excess profits tax, he may make such adjustments as appear to him to be necessary in order to bring to account the full amount of the excess profits tax which he considers appropriate.

If as a result of a transaction entered into by an assessee the liability to excess profits tax is affected, and the Excess Profits Tax Officer claims that the transaction was entered into with the definite purpose of evading liability to excess profits tax, the burden must be on him to prove that the main purpose behind the transaction was avoidance of the payment of the tax. To this effect are decisions in *George Sahas Devdas Singh v Commissioner of Excess Profits Tax, U P, C P and Berar* (1) a decision by this Bench in *C. S. Meyer Mahomed Ibrahim and Company v Commissioner of Excess Profits Tax, Madras* (2) a decision of the Madras High Court and in *Amrinder Rajee and Sibi Mal, Ltd. v Commissioner of Income Tax, New Punjab* (3) a decision of the Patna High Court.

In the second group of cases falling under section 14 of the Indian Income Tax Act it must be borne in mind that the assessment was once completed and the Income-tax Officer wants to reopen the case. In such cases, therefore, he is bound to show that there was sufficient justification for reopening the proceedings which had

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George Sahas Devdas Singh v  
Commissioner of Excess Profits Tax,  
U P, C P and Berar  
(1)  
C. S. Meyer Mahomed Ibrahim and  
Company v Commissioner of Excess Profits Tax,  
Madras  
(2)  
Amrinder Rajee and Sibi Mal, Ltd. v  
Commissioner of Income Tax, New Punjab  
(3)

(1) 108 I.T.R. 300.

(2) 108 I.T.R. 300. (3) 108 I.T.R. 300.

has since been considered. The cases cited before us relate to a period before 1948 when section 24 of the Indian Income Tax Act was not amended and it is not necessary for us in this case to consider the effect of the amendment, nor is it necessary to discuss those cases at any length. Those cases are *Lalji Lal Girdhar Das v Commissioner of Income-tax*, U P (1) again a decision in the Bench *Mohan Krishna Lal Jaiswal Lal v The Commissioner of Income-tax*, U P (2) *Lal Mohan Krishna Lal Paul v Commissioner of Income-tax, Bengal* (3) and a Full Bench case of the Court is *re Ram Datta Das Ram of Bari* (4). In these cases the burden of proving that it was taxable income of the relevant year was placed on the Income-tax Officer. On the other hand is *Mahadev Prasad Motani Lal v Commissioner of Income-tax* (5) where the assessee's explanation was rejected it was held that in such case it would be a question of fact and the answer would depend on the finding whether the inference was a reasonable inference from the assessee's failure to prove his case.

The cases in the third group are cases where an Income-tax Officer in the course of an assessment under section 23(1) discovers that the assessee has received a sum of money during the relevant assessment period and his explanation as to the nature of the receipt is not satisfactory. These cases are really in point and we would therefore deal with the cases in this group at some length.

The first case that was cited to us is *Ganga Prasad v Commissioner of Income-tax*, U P (6). In that case there was an entry of the receipt of a sum of money

(1) 1950 AC 1073, 1074. (2) 1950 AC 1173, 1174. (3) 1950 AC 1175, 1176. (4) 1950 AC 1177, 1178. (5) 1950 AC 1179, 1180. (6) 1950 AC 1181, 1182.

The master claimed that the money had been given by his wife. This explanation was not found satisfactory. The Income tax Officer further found that he gave an evasive reply to a direct question whether the money did not represent profits made by himself. It was also found that there was a regular inflow of money year after year from the same source. A conclusion was drawn that the money had been coming on a secret business which yielded income and profit. The Court held that this was a conspiracy, on a question of fact and on evidence of last year.

**How  
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The fact is *Swearingin Products Limited v. Dadi (M M Inspector of Taxes)* (1) are somewhat similar. The assessee claimed that a greater part of the amount represented money belonging to his sons which she had lent. The appt. was quashed and the court having even less the money. The amount was thus treated as taxable income. It was held that the ques-

In *F. A. Sullivan v. Commissioner of Internal Revenue*, 80-2 USTC ¶9670, 42 AFTR2d 80-551 (CA-9, 1980), the taxpayer's bank accounts showed considerable credits for a period of one year. The spouse gave no explanation as to the source of those credits. The Income Tax Officer was obliged to act under the provisions of section 13 and in doing so he allowed a credit of the total amount of credits towards tax payable and included the balance of one third as the available income. It was held that this was a pure question of law there being nothing to show that the Income Tax Officer had any way acted independently with the provisions of section 13.

In *Indonesian-Java Proverbs: A Commentary of Javanese, Balat and Greek* (3) the author explains that the proverbs quoted were received from

**Abstract**

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the bona fides of the bank was discredited. The reports showed extraordinary loss profits and upon the circumstances the Tribunal had held that there were secret profits. On a reference the High Court held that it could not go into the question whether the conclusion arrived at by the Tribunal was justified so long as there was legal evidence in support of it.

In *C. M. Madappa v. Commissioner of Income Tax, Madras* (1) it was held that the burden of proving that cash credits were not profits was on the assessee and not on the Income-tax Officer and the fact that he had failed to go into certain unexplained cash receipts in earlier years did not affect the question of burden of proof. The observations are important and are as follows:

There cannot be slightest conceivable doubt that when both the source and the nature of the cash receipts shown in the accounting year have not been proved, the Income-tax Officer cannot draw any other inference except that those two amounts are income receipts. He cannot come to the conclusion that they are capital receipts. If it were held that he should, the result would be that every assessee will be entitled to enter cash credits in his accounts and where so furnish the requisite particulars about its source and nature and insist that these credits should be automatically treated as capital receipts and not as income receipts.

In *re Chikram Jagannath* (2) the assessee explains that certain cash credits entered in his books in particular years were incorrect. The question referred was as to the effect whether the Tribunal was justified in holding that the amounts represented revenue receipts.

AC 1001 (1954) 28

SC 1001 (1954) 28



disposed of in their deposits. The High Court held that the question was one of fact for the Tribunal to decide and on the facts of the case it could not be said that there were no materials on the record on which the Tribunal would come to the finding it had arrived at.

The facts in *Commissioner of Income-tax v. Anglo-Persian Petroleum Co. (No. 2)* and *South Indian Petroleum Co. Ltd. v. Commissioner of Income-tax* (1) were entirely different. There the source of the receipts was known. The amounts had not been paid to the assessee as compensation for its cancellation of three contracts; the question was whether that was income or a casual receipt or capital receipt. It was held that if the Department claims to exercise the right of taxing a particular receipt, it must be established that the receipt in question was income, profit or gain falling under any of the heads of income mentioned in sec. 10 of the Act.

The facts in *Commissioner of Income-tax v. Anglo-Persian Petroleum Co. (No. 1)* and *South Indian Petroleum Co. Ltd. v. Commissioner of Income-tax* (2) were also different. There too the source of the money received by the assessee was established. It represented genuine remuneration from outside by partners. The explanation of the partners as to where they got the money from was not accepted. It was held that from the failure to accept the explanation of the partners, the Department might be able to draw an inference that the amounts represented undisclosed profit of the partners, but there was no material on which it could be held that the amounts were undisclosed profits of the assessee firm.

An examination of the three cases would therefore go to show that if from the books of account of the assessee it appears that during the relevant assessment period he

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had received certain sums of money, it is for him to explain from where he got the same. And if his explanation is accepted, there is an end of the matter. The question then might arise, which would be in many cases a question of law, whether the taxpayer claims that the receipts—his money being known—is his taxable income or not. Where, however, his explanation is rejected, the Tribunal has to record a finding on such materials as may be available, who has the money represented income during taxable or income of the relevant return period. The burden in the first instance, then, is on the taxpayer to show the true nature of the receipts and, why he claims that it is not taxable income. When the taxpayer believes in its plausibility of that explanation is unsatisfactory, that may as well be a circumstance which the Income tax Officer may be entitled to take into consideration, but it need not necessarily in every case lead to the conclusion that the receipts are a revenue receipts taxable as income received in a particular year. The question must always remain a question of fact which has to be decided on the material available. In such case the Income tax Officer is entitled to take into consideration the fact that the explanation given by the taxpayer is either sustainable or is false and then to consider whether that circumstance, alone or the other materials available along with that circumstance would enable them to hold that the amount so deposited represented the undistributed income of the taxpayer in the year of question.

Mr. Peltai, learned counsel for the taxpayer has relied on the fact that the amount of Rs 2,000 was deposited on the 21st of November 1940, i.e., a month and five days from the beginning of the account year, which was 26th October 1941. Considering the nature of the business mentioned above, it cannot be said that

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It was not possible for the witness to have made a gross profit of Rs. 5,000 in the course of a month and five days. We cannot therefore say that the reference that he was an extraordinary reference.

As regards however the cash deposit of Rs. 65,000 earned around Rs. the witness has pointed out that the deposit was made on the very first day of the account year and considering the extent of the business carried on by the witness, it was not possible that they could have made a profit of Rs. 65,000 on one day. The Tribunal however, did not seem to have attached any importance to the argument and have overlooked this aspect. We have looked through the statements made for the year 1941-42 and we find that in that year the witness had made a total profit of Rs. 1,08,144. After deducting a sum of Rs. 48,878 for sales profits tax he brings the business profits tax were reduced to Rs. 65,744. The sum of Rs. 65,000 that was more than half of the total profits made in the course of the year and it is not at all reasonable to expect that this huge profit could have been made on the 15th of October, 1941 the first day of the relevant account year. No attempt was made to go further than this matter or to produce any material which would go to show that this huge profit could be made on the first day when the account year commenced. Mr. Pithal has offered to produce before us the account books to show that after having carried over the previous year's balance there were the first sales that were made in the account books. He has suggested that the witness must have been made such in the day and there was, therefore no likelihood of any account profit having been made on the day. We do not think we can allow learned counsel to produce such evidence before us, for from the circumstances that appear from the statements of the



It was so ordered by a decree of a revenue court passed on the 14th of the month of September 1914 under an agreement of settlement filed by parties who took no part in that agreement as was noted by a 190 of the United Provinces Land Revenue Act 1904.

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Such a suit falls clearly within the purview of s. 42 of the Specific Relief Act, 1925 and is of a civil nature.

Implementation s. 42 of the Civil Procedure Code, 1908, has no application where the persons who have not a representative can be named as parties to a suit. In the case of s. 42 of the Code and the persons who are to be named in the decree, agreed to in that case cannot be deemed to have been represented by their legal representatives.

Second Appeal no. 212 of 1914 from a decree of F. A. Chaffy, District Judge, Rohtak dated the 13th December 1911.

The facts appear in the judgment.

V. P. Singh, for the appellants.

B. C. Ghosh, for the respondents.

The judgment of the Court was delivered by—



ANAND LAL, J. —This is a defendant's appeal brought out of a suit for a declaration that a certain piece of land of the revenue court dated 27th November 1914 obtained by the appellants was void and not binding on the plaintiffs respondents and the defendants named as who are alleged to be respondents. The facts briefly stated are as follows:

1. The appellants first are residents of village Ghos and second are residents of village Ghos. Both these villages are situated in the district of Rohtak. Both these villages were included in the same revenue settlement which was made in 1914. In the year 1914 the appellants claimed a right to possess a certain piece of land which was included within the limits of the village Thaph and proved that the plot of land included within the boundaries of their village Ghos. The Assistant Officer considered the claims and held



no doubt. The suit was for a declaration that a certain revenue decree was not binding on the plaintiffs and that the defendants decreeholders were not entitled to exercise the rights in respect of the property owned by the plaintiffs and the defendants stood at. This suit was clearly one which fell within the purview of section 42 of the Specific Relief Act and was of a civil nature. The contention of the learned counsel for the appellants was that section 207 of the Land Revenue Act barred the suit in the civil court. Under section 280 of the Act any dispute pending before the officers mentioned in that section may with the consent of the parties be referred to arbitration and the officer concerned may pass a decree in terms of the award given by the arbitrator. Section 207 then provides:

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Such decrees shall be at once carried out and shall not be open to appeal unless the decree is in excess of or not in accordance with the award, or unless the decree is impugned on the ground that there is no valid award as law or in fact.

and no person shall interfere any suit in the civil court for the purpose of setting it aside or against the arbitrator on account of their award.

Reference is placed upon the expression "no person" and it is pointed out that it includes every person whether he was or was not a party to the proceedings before the revenue court. The word "persons" in Shreeganga is understood only as the persons before the revenue court, as it is the law before that court. It can have no relation to persons who were not parties to the proceedings. The plaintiffs in the present case were not parties to the proceedings of reference in the case in which the decree in dispute was obtained. Section 207 in our opinion did not

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debar them from claiming the right which they say is the present one.

It was next urged that, though the plaintiff was not themselves parties to the reference in the 1914-15 year, they were well bound by virtue of the provisions of Explanation 4 to section 11 of the Civil Procedure Code. This contemplates what is an own opinion on a movable. Explanation 4 to section 11 refers to a case in which the person sought to be bound by the decree is deemed to be represented in the previous suit by virtue of proceedings having been taken under Order I Rule 4 of the Civil Procedure Code or otherwise. See *Kumaram's Chettiar v. T. P. Perumal*, 1914 (1) and *Madhav Shastri v. Anandee Kumbhar*, 1914 (2). Where the previous suit was not representative and the person sought to be bound by the decree moved in that case merely for dismissal, it has been held several times in that language. Explanation VI to section 11 can have no application.

No other point was raised. There is no force in this appeal, and we dismiss it with costs.

There is a cross objection with regard to the suit not allowed in the respondent by the lower appellate court. The lower appellate court has had full jurisdiction in the matter of working over and after on the of her is involved. We do not need cross objection withdrawn and cross objection dismissed.

1934 F. 100

1934 F. 100



## APPELLATE CIVIL

Before the Honourable J. Mohi, Chief Justice, and  
Mr. Justice Bhargava

SHARMA AND COMPANY (Debtors)

KEDAR NATH (Plaintiff),

*vs.*  
Debtors

*Code of Civil Procedure, 1908 (C. No. 14) s. 136—Order of a Court being exclusively stayed by a writ of Injunction—Grant of two writs—order to strike off defence*

In a previous case where a writ is granted, that a party to a litigation has been exonerated and has deliberately flouted the order of the Court and has been abusing its process as the respondent to dismiss the suit or to strike off the defence under Or. 14 s. 136 or s. 131 of Code of Civil Procedure.

Second Appeal no. 151 of 1948 from a decree of Panch Ram Misra, Temporary Civil and Sessions Judge at Kanpur dated the 15th January 1948.

The facts appear in the judgment.

† B. L. Gaur, for the appellants.

Krishna Shukla, for the respondents.

The judgments of the Court was delivered by—

MAHA, C. J. —This second appeal has been referred to a Bench by a learned single Judge as he thought that certain decisions of this Court which were cited before him could not be reconciled with each other.

The plaintiff filed a suit for recovery of amount and recovery of Rs. 1,000 or any amount which may be found due to him after accounting. The plaintiff's case was that he was employed as defendant's servant and the terms of employment were that he was to get

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defendant provided the commissioner was allowed to make a complete inventory of the books and files required by the plaintiff and put his signature on them. On the same day the learned Vice-Chancellor passed an order that the seven account books and five files which had been locked and sealed in a desk may be returned to the defendant but that the commissioner should make a complete inventory and put his signature on the other account books and files required. After the order the defendant was handed back the seven account books and the five files and he undertook to produce them whenever required by the plaintiff. On the 17th of July 1948 the commissioner made a fresh report that during the period between the 2nd of June and the 17th of July he had made several attempts to make a complete inventory but the defendant had on some previous or other prevented his carrying out the orders of the court. On the 22nd of July 1948 the plaintiff filed an application that the commissioner should be directed to take the account books in his possession and on the 28th of July 1948 the court granted the application. After the order of the 28th of July the defendant filed an application on the same day objecting to the commissioner taking possession of his books and putting his signature on them but the court refused to vary its previous order. On the 5th of August 1948 the defendant filed another application that the court's order on the plaintiff's application of the 22nd of July was passed without notice to him and that before any further orders are passed the court should decide whether the plaintiff was entitled to get the account books produced. On the 13th of September 1948 the learned Vice-Chancellor set aside his first order of the 28th of July 1948 on payment of £218. On the 17th of August 1948 the plaintiff filed his reply to the defendant's application of the 18th July 1948 and on

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On the 15th of September 1948, the learned Master again passed an order that the commissioner should sign the defendant's books. On the 17th of September 1948, the commissioner signed three more account books and on the 25th of September 1948 he made a report that he had put his signature on the first and the last pages of three more account books but the three more other days and books which were not produced before him. On the 1st of October 1948 the plaintiff filed an application that the defendant be "stripped off" and on the same day the learned Master passed an order directing that the defendant be "stripped off" under Order XI, Rule 21 of the Civil Procedure Code and on the 5th of October 1948 he decreed the suit *ex parte*. Against the *ex parte* decree of the 5th of October the defendant filed an appeal but the lower appellate court affirmed the order of the learned Master and dismissed the appeal. There was a second appeal filed in this Court which was disposed of by a learned single Judge and on the learned single Judge having affirmed the suit it has come up before this Bench for decision.

On going through the record carefully we were surprised to find that most of the orders passed by the learned Master were without issuing any notice to the other side. Whenever an application was filed by a party he passed an order on it and left it to the other party to come and object. We were also surprised to find that up to now no court has tried to look into the question whether the plaintiff was justified in giving the commissioner appointed to sign the account books and files of the defendant an order that the commissioner should take charge of account books and files belonging to the defendant.

There has been admission that the plaintiff was defendant's servant and that he was entitled to Rs. 10

per month as salary. As regards the house the defendant says that it was an on-going payment while the plaintiff alleged that it was a part of the contract as per service that he would be paid house at the fixed rate of Rs 50 per month. The other point in dispute was whether the plaintiff worked up to the 15th of January 1947 when he ceased to work for the defendant as was pleaded by the defendant or his services were terminated on the 15th of April 1947, as was alleged by the plaintiff. The plaintiff being admittedly defaulter servant we do not see how the plaintiff could claim refund of account. We heard over the application dated the 11th of May 1946 and the books of account summoned. They were Khata Bahu, Folia, Rohar Bahu, Folia and Nagal Bahu for Samsat 2002, 2003 and 2003-2004 as also Mai Nagal Kanya Bahu Bahu, Mai Nagal Sai Rohar Chhapar Bhatihon Bahu and a number of miscellaneous files. How these papers were relevant was not disclosed in the application and the learned Munsif is no more we desire to find out the relevance of these papers. On the 1st of June the commissioner took charge of the Khata Bahu Folia, the Rohar Bahu Folia and the Nagal Bahu of Samsat 2002-2003. He also took charge of the 'Mai Nagal Sai Nam Bati Bahu Kanya Nam Bati Bahu Sai Mai Nagal Kanya' and five files relating to the defendant's term. On the 15th of September 1946 the commissioner took charge of and signed the Khata Bahu Folia, the Rohar Bahu Folia and the Nagal Bahu for Samsat 2003-2004. The main account books there, five had already been taken charge of by the commissioner. Some miscellaneous books for Samsat 2003-2004 and probably some other files were all that remained. If the plaintiff's objection was as then, that he had written these account books up to the 15th of April, as was alleged before us by his learned counsel and if

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that were into the main account books having been signed by the commissioner and when charge of by him there could be no further difficulty in proving the things there.

We are therefore constrained to observe that in putting the various hypotheticals under the learned Maudsland as not coming within the other side books passing the books. He also agreed in directing the commissioner to send the books or to sign them without first going into the question whether the plaintiff has a right to have those books produced or sent and whether those books were relevant for the decision of the case. The learned Maudsland has not even gone into the question whether the defendant was an accounting party in spite of the fact that the defendant had applied to him for a decision on that point.

In a suit by a partner for dissolution of partnership and accounts or by a person interested in the assets of a firm for his share in the assets after accounting or in a suit for accounts by a master against a servant or by a principal against his agent and in other similar cases the plaintiff may have the right to apply to the court that the account books be sent or the defendant be directed to produce them so that the books may not be destroyed, damaged or tampered with but in a case like the present where the plaintiff who was admittedly the servant of the defendant had brought a suit for recovery of arrears of salary and for payment of arrears of bonus which according to him was to be paid as a fixed sum and for arrears of sum of \$2170 which, he said, he had deposited but which had not been returned by the defendant it is difficult to say how the defendant could be called an accounting party and how the plaintiff could claim from the defendant a relief that the defendant be directed to render accounts. The said learned counsel for the plaintiff the question and

the only reason that he could give was that the books and the papers were needed to show that the plaintiff was working as defendant's servant up to the 18th of April 1945, and not up to the 18th of January 1947 as was alleged by the defendant. The several books and files were therefore required merely as means of evidence.

There are elaborate provisions in the Civil Procedure Code as regards the manner in which the facts in issue have to be proved and in which the evidence from memory and oral has to be produced. Under Order 9 the court is required to examine the parties to bring out clearly the points in controversy between them. Rules 1 to 30 of Order 31 provide for service of interrogatories by one party on the other and if these interrogatories are insufficiently answered or a party on whom they have been served wishes to examine them, rule 31 provides that the party interrogating may apply to the court for an order requiring him to answer or to answer further as the case may be, and an order may be made requiring him to answer or answer further under by affidavit or by oath or under and by having sworn. Rule 32 onwards then provides that the interrogatories shall be submitted to the court and the court has to apply its mind as to what interrogatories should be answered for disposing fairly of the suit and for saving costs. Rule 32 onwards then provides for discovery of documents. Rule 33 provides that a party has to apply to the court for an order directing the other party to any suit to make discovery on oath of the documents which are or have been in his possession or power relating to the matter in question before the court has been to be satisfied that the discovery is necessary and at that stage of the suit such discovery shall be ordered only when the court is of opinion that it is necessary either for disposing fairly of the suit or for saving costs. The application of the

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that of May that a commissioner may be appointed to view the accounts books was not an application under Order XI rule 12 nor does it appear that the court had in any way applied its mind to the question whether the documents to be viewed were necessary for disposing fairly of the suit or for saving costs. After the discovery a party has a right under rule 18 to call for inspection. Again an order of inspection should not be made unless the court is satisfied that such inspection is necessary either for disposing fairly of the suit or for saving costs. Rule 18 provides for supply of verified copies. Rule 19 in this connection is important as it provides that if the right to discovery or inspection depends on determination of any issue or question in dispute in the suit then that question or issue should be decided before such discovery or inspection is ordered. We have then rule 19 which provides that when any party fails to comply with an order to answer interrogatories or for discovery or inspection of documents he shall, if a plaintiff be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence if any struck out. Rule 19 can therefore only apply in cases where the provisions of Order XI have been followed and such interrogatories have been duly served in accordance with the order of the court and that order had not been obeyed or discovery or inspection had been asked for and ordered by the court and the order of the court had been disobeyed. The cases on the point appear to be clear enough and they are—*Kishan Lal v. Sultana Singh* (1), and *Eyolfson Paper Mills Co. Ltd. v. The Canadian Paper Mills Co. Ltd.* (2).

We have then separate provisions in the Code for production of documents and the same are contained in

(1) 2004 S.L.R. 10 at 1.

(2) 2004 S.L.R. 42 at 43.



Order XIII which enabled a party to produce his own documents, and then Order XVI rule 6 which applies to the summoning of documents from third parties, and which has been made applicable to summoning of documents from parties to a suit by rule 21. From cases regarding failure to comply with the summons are to be found in rules 10, 11 and 12 which enable the court to issue a warrant and issue an attachment order. Rule 20 provides that when a party to a suit procures an agent without lawful excuse when required by the court to give evidence or to produce any document then and there in his possession or power the court may pronounce judgment against him or make such order as respects to the suit as it thinks fit. We may mention that in the old Code of 1842 sections 174 provided for striking off the delinquent or dismissing the suit not only for non-compliance with an order to answer interrogatories or for discovery or inspection of documents but also an order for production of documents but in the rules as regards production of documents were in the new Code placed under a separate order those words were removed from Order XI rule 21.

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This case was referred to us by a learned single Judge for the decision of the question whether the court has inherent jurisdiction to strike off a defendant where a defendant had flouted the authority of the court and had not carried out its orders. We have already said that the applications filed in this case on behalf of the plaintiff could not be said to have been applications contemplated by Order XI of the Code and the court therefore could not have acted under rule 21 of Order XI. This does not however mean that in a proper case where the court is satisfied that a party to the litigation has been contumacious and has deliberately flouted the orders of the court and



## CIVIL MISCELLANEOUS

*Before Mr Justice Agastya and Mr Justice  
Chatterjee*

SHYAM LAL (Applicant)

STATE OF UTTAR PRADESH and another  
(Respondent Parties)

1944  
100/1

**Constitution of India, Art. 311—Fourth removal during  
war—Misery explained—Civil Service Regulations  
paragraph 403—Third removal used as it is contained  
in contract—Paragraph 404 whether valid**

The word "removed" in Art. 311 of the Constitution is not  
used in its widest connotation but refers to a removal which  
is not done with the consent of the employee himself who  
may try to explain it.

A statement under paragraph 404 of the Civil Service  
Regulations is not compulsory unless the word "removed" used  
in Art. 311 of the Constitution.

Rule 404 of the Civil Service Regulations is a valid rule  
not affected by rule 403 in the case of Civil Servants of Employees  
and not cancelled or abrogated by rule 34 of the Fundamental  
Rules.

The expression "during war" as used in Art. 311 of the  
Constitution does not imply a mere opportunity of advancing  
an explanation but implies that an adequate opportunity of  
making evidence in support of the continuance of service con-  
sented and continuously continuous service against him must  
be given and if sufficient opportunity of continuous service  
warranted of the other side and of advancing explanation thereof  
also be given.

*Case law referred*

Civil Miscellaneous no. 219 of 1933

The facts appear in the judgment.

English text for the applicant.

The Advocate General (K. P. Menon) for the  
opponent parties.

that  
the  
applicant  
is  
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member  
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Service

The judgment of the Court was delivered by—

**JAGMOHAN, J.**—Mogam Lal, applicant, was a member of the Indian Service of Engineers occupying the post of the Superintending Engineer VI Circle in the Engineers Department of the State of Uttar Pradesh. He was promoted to the rank of Superintending Engineer in August 1944 and was holding that post when the dispute in the case first took its definite form. The applicant joined his Civil Engineering Foundation from the Thompson College, Roorkee in 1922 standing first in his class. He was awarded the Council of India Prize of Rs 1,000 for being the best student of the year and a prize of Rs 500 for being the best Indian student of the year. He was also awarded the Cavendish Gold Medal for the best Engineering design of the year. He was appointed as the Indian Service of Engineers in October 1925 by the Secretary of State for India in Council. At the time of his appointment the applicant was given a letter of appointment by the Secretary of State for India in Council which provided under the conditions governing the applicant's terms of appointment, viz. Scale of service, promotion, leave, pension, etc. A copy of the letter has been annexed to the petition. After the attainment of Independence by India a fresh covenant was entered into between him and the Governor of Uttar Pradesh and the Governor General of India by which the applicant's original conditions of service were confirmed. According to the applicant, he assumed the discharge of certain obligations in the service whose work he had the misfortune to connect in connection with his routine duties as Superintending Engineer and those persons started making wrong reports against him. On the 24th January 1950 the U. P. Government addressed a letter no. 41 B/1711—

17th 1918 to the Chief Engineer, Bangalore Branch, U. P. asking for the applicant's explanation in regard to certain charges. The charges related to certain alleged excess payments by him to certain contractors, which as the opinion of the Government, were unjustified. One of the charges however related to the horses' salaries.

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The applicant submitted his explanation to the charges to the Chief Engineer. It appears that there after the Chief Engineer sent his own note in reply to the applicant's explanation to the Union Public Service Commission, which stated that the charge relating to dishonesty was not proved, while the other charges were proved. On the receipt of this report the President of India passed an order on the 17th of April 1918, compulsorily retiring the applicant from service with effect from the date of the handing over of the charge by the applicant. Before the order could be served on him, the applicant made an application to the Court under Article 226 of the Constitution, proving that none of the charges he stated opposing the President's order dated the 17th April 1918, ordering the compulsory retirement of the petitioner. In this petition he alleged that the order had not yet been served on him and that it might be served on him at any time. He prayed for an ad interim order directing the opposite parties, namely, the State of Uttar Pradesh and the Union of India to refrain from retiring the petitioner of his present post and from carrying into execution the aforesaid order. The grounds on which the petition was based was that applicant was not given any reasonable opportunity to show cause against the action proposed to be taken against him; that he was merely asked to submit an explanation which he did but was not given an opportunity of cross-examining his evidence and arguments, the charges which were levelled against him or the remarks which were

made against him by the Chief Engineer. When this application was produced to us we considered that a previous order (a) had been made, not sent, and (b) to the request for the grant of an interim order and decreed that the order of 12th April, 1955 be put into effect till the decision of this petition. Later on the representation of the Advocate General on behalf of the State the interim order was modified and we directed that the Government may not if they like take any work from the applicant but may pay him the wages till the decision of the application. We understood that the applicant has been drawing his salary during the pendency.

We have now heard learned counsel on both sides and we have come to the conclusion that the applicant is not entitled to the relief claimed by him. The applicant relies upon Article 311 of the Constitution. That Article provides—

No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank, until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

There is a proviso to subarticle (2) which is not relevant for the purpose of the present case. In subarticle Article 311 provides a twofold protection to an employee in the civil service of the Union or of a State (i) that such an employee shall not be dismissed or removed by an authority subordinate to that by which he was appointed and (ii) that such an employee

that not be dismissed or removed or reduced in rank and he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The applicant's case is that he was removed from service and as such he was entitled to a reasonable opportunity of showing cause against his removal which he was not given.

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The alleged removal of the applicant was under paragraph 15(4) of the Civil Service Regulations which provides as follows:

For officers mentioned in Article 54(4) the rule for the grant of retiring pension is as follows:

(1) An officer is entitled, on his resignation being accepted, to a retiring pension after completing qualifying service of not less than twenty-five years or in the case of officers of Imperial Services of the Forest Geological Survey Public Works Railways and Telegraph Departments and any others covered by Article 63(1) who entered the service before the 6th day of December 1945, not less than twenty years.

(2) A retiring pension is also granted to an officer who is required by Government to resign after completing twenty-five years qualifying service or more.

There there are two notes to this paragraph. Note 1 reads—

Government retains an absolute right to require any officer after he has completed twenty-five years qualifying service without giving any reason and no claim to special compensation on this account will be maintained. This right will not be exercised except when it is in the public interest to dispose with the further services of an officer.

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**  
 6. **References**

The applicant was, according to him, married under sub-paragraph (2) of paragraph 482A, was with her 1. The applicant had completed 25 years of qualifying service. He had not attained the age of 55 years which is an age of superannuation and when he would do so (on the 15th of January 1993) there would be under this rule no award of a gratuity to the person which the applicant may be entitled to. It is contended in the present case that no such rule has been ordered in his case and no other paragraph was relied on by him.

On behalf of the opposing party, it is alleged that a contemporary statement under paragraph 467A is not a formal waiver the meaning of Article 311 of the Constitution and further that even if it be so the applicant was given a reasonable opportunity of showing cause against his removal, inasmuch as he was asked to submit an explanation which he did and nothing more, in the circumstances of the case was necessary to be done.

*Timeline:* two questions fall for decision (1) when they removed within the meaning of Article 9(1) in either instrument, as may be inferred under paragraph 482-A of the Civil Service Regulations; and (2) whether if removal includes instrument under that paragraph a reasonable opportunity was given to the applicant? A third question also arose in the case as to it whether paragraph 482-A is a valid rule of regulation and whether it is applicable to the applicant.

The word 'removed' means in its dictionary meaning 'displaced' or 'discharge' from a setting pertaining to its waters scope it would include every kind of displacement of a person from a care facility. It would



therefore, also in that sense include a continuing reference to the attainment of the age of superannuation under sub. 50 of the Fundamental Rules. It may also be said that it would include, in that larger sense, the termination of the service of an employee for any reason whatever, for instance on the expiry of his term of office which he held. It is obvious that a rule of law such as that meant to be given to the word "removal" as used in Article 321 of the Constitution. The Article requires that a reasonable opportunity as to be given to an employee to show cause against the action proposed to be taken against him. There can be no question of showing cause when a service is terminated, because a person has attained the age of superannuation, or because his term of service which he could hold under a contract under which he was employed, expires. In all these cases the action of terminating an employee's service is taken not because of any misconduct or fault of the employee but because his term of office has come to an end by the automatic operation of some rule applicable to him or by some term of the contract of his service. A person can be asked to show cause against an action proposed to be taken against him, if the action proposed to be taken against the applicant is of such a nature that it may possibly be avoided if properly explained. If the termination of service is inevitable, not for any fault of the employee, no question of explanation arises. Therefore, it must be held that removal within the meaning of Article 321 must refer to a removal which is for some fault, is misconduct of the employee himself which he may try to explain. The word "removal" is not used in an widest, unrestricted as Article 321 as it is usually taken to mean by the Supreme Court in *Santhi Chandra Jaiswal v. The Union of India* (1). In that case a temporary employee's term of service was terminated by means of a notice as required by the terms of the contract of his service. The Supreme Court pointed out that such termination of

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1001 service did not amount to removal within the mean-  
1002 ing of Article 311. We have, therefore, accordingly to  
1003 pay some limitation on the construction of the word  
1004 removal in Article 311. Under paragraph 4(b) of  
1005 the Civil Service Regulations, there must be compulsory  
1006 retirement of a person who has completed 65 years of  
1007 qualifying service. On completion of that period of  
1008 service the employee is granted full pension, as would  
1009 be available to him when completing that period of ser-  
1010 vice, and he is entitled to all emoluments to be would be  
1011 entitled to if his services were terminated at that par-  
1012 ticular point of time. With the exception of the fact that  
1013 he may stand to lose retirement by a premature retire-  
1014 ment from service he suffers no other stigma. But the  
1015 difficulty that arises is that paragraph 4(b) itself pro-  
1016 vides that the premature retirement of an employee  
1017 will not be made unless it is in the public interest to  
1018 do so.

1019 The argument on behalf of the applicant is that this  
1020 is tantamount to saying that the employee is blame-  
1021 worthy or at any rate has some defect or disqualifica-  
1022 tion for which he is compulsorily retired under that  
1023 paragraph and it is urged that for that reason it is  
1024 unusual and just that he should be afforded serviceable  
1025 employment elsewhere, viz. he should not be pre-  
1026 matured retired and put on a level different from his  
1027 colleagues in the service. We have given our best con-  
1028 sideration to this matter and although much can be said  
1029 for either view, we have finally come to the conclusion  
1030 that the contention advanced on behalf of the State is  
1031 the correct one and must be accepted. A brief considera-  
1032 tion of the history of the rule enacted in Article 311 of  
1033 the Constitution would confirm this conclusion.

1034 Before the Government of India Act 1919 there  
1035 was no restriction on the power of the Crown to dismiss  
1036 a servant employed in the civil service, at pleasure.

The general English rule was that services of all the Lords could be demanded at the pleasure of the Crown. There was only one exception to the rule and it was this that where an appointment was made under an Act of Parliament providing demand for good cause the service could not be demanded at pleasure. This distinction between the two classes of cases was pointed out by the Privy Council in *R. v. Baskerville v. Secretary of the State* (1) where their Lordships quoted the opinion of Lord Mansfield as delivered in *Attorney v. Smith* (2):—

**THE  
NATIONAL BUREAU  
OF  
STATISTICS  
OF THE  
UNITED STATES  
DEPARTMENT OF  
COMMERCE**

It appears, as their Lordships find, that the proper grounds of decision in this case have been expressed in *Stratton J* in the Full Court. They consider that unless on special cases where it is otherwise provided services of the Crown hold their officers during the pleasure of the Crown, not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a writ, but by an appeal of an official of political kind. As to the references then, Lordships again agree with *Stratton J* that they are merely directions given by the Crown to the Commissioners of Crown offices for general guidance, and that they do not constitute a contract between the Crown and its officers.

A special drive such as was contemplated on the above road passage occurred on Grandt's own grounds. In early 1912 when the Board consisting of three members, two of whom had as in Alabama now held the position of county bird officer in New South Wales under circumstances regarding which in the body of the New Titles Bird Service Act 1910 and then about 1911

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Control upheld the latter view, namely, that the power subject to the provisions of the Act, and of the rules made under the Act, did not limit or qualify the unfettered discretion of the Crown to dismiss a servant in the Civil Service at pleasure, that the remedy for the violation of the rules and regulations was political and not legal. In the Government of India Act, 1935, the position was altered. Under that Act over and above the discretion on the pleasure of the Crown to dismiss a civil servant at pleasure which was already embodied in section 56B, another restriction was imposed and it was that a civil servant could not be dismissed or reduced in rank unless the person concerned was given a reasonable opportunity of showing cause against the action proposed to be taken against him. In this provision which was embodied in some of the rules, was given a statutory recognition. Under rule 2c of the Civil Service (Classification, Control and Appeal) Rules which were made under the provisions of the Government of India Act, 1935 a government servant in the civil service of the Crown was entitled to get a reasonable opportunity of defending himself against the action proposed to be taken against him. A similar provision was included in section 249 of the Government of India Act, 1935, and the right of consultation being given for showing cause was thus given a statutory recognition. Nevertheless the power of the Crown to dismiss a servant at pleasure which means without giving any opportunity to the dismissed servant, was not largely affected. The rule which had merely administered justice to political officers having not been given statutory sanction, did not impose a statutory limit on the power of the Crown to dismiss a servant at pleasure, but the cases to which the limit applied were of (a) dismissal and of (b) reduction in rank. The word

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 Section 249

that removal was not used in the Government of India Act 1955

under rule 49 of the Civil Service (Classification, Control and Appeal) Rules several kinds of punishment could be inflicted for good and sufficient reason on a civil servant. These included dismissal, reduction in rank, and also removal. The distinction between dismissal and removal was that while dismissal carried a finding upon a dismissed servant not to be able to work a government service again removal did not have that effect. In the case of removal government service could be granted under rule 50.5 of S.D.A. Civil Service Regulations a compensatory allowance or even pension but at a reduced amount. Upon dismissal, there was no question of the grant of any pension.

Removal was used in rule 49 by way of punishment. A question arose under the Government of India Act 1955 whether the statutory protection afforded by section 249 in case of dismissal and reduction in rank also extended to the case of removal though the word removal was not used in that section. In *High Commissioner for India v. I. M. Lal* (1) Mr I. M. Lal, a member of the Indian Civil Service, was removed from the Indian Civil Service but not dismissed in the relevant year. The Privy Council considered the provisions of section 249 sub-section (5) as applicable to the case of removal as well which word was assumed to be comprised within the word dismissal.

When the present Commission was framed, it adds now to the word dismissal an opportunity was taken to add the word removal after the word dismissal and before the phrase reduction in rank. As the phrase stands now "Dismissal removal and reduction



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J. B. McCREARY, JR.

Rule 453A deals with persons when a person is removed from service when found unfit for further advancement. It says that—

a person belonging to one of the following services who is proved to be unfit for further advancement is removed from service by the Secretary of State on the recommendation of the local Government and the Government of India; he may with the sanction of the Secretary of State be granted a pension not usually exceeding and not exceeding so great as that which would have been admissible to the officer if he had been retired on medical certificate.

Removal from service under rule 453A is also spoken of in disciplinary treatment, but this has nothing to do with retirement under rule 451A.

Retirement under the rules is of two kinds: (a) retirement on reaching the age of superannuation which is fixed at 60 and in some cases at 65 and (b) retirement on completion of 25 years of service. The last is dealt with in rule 453A which we have already quoted.

Retirement under both these provisions is not spoken of as removal in any of the rules. It is concluded that retirement on reaching the age of superannuation is not removal within the meaning of Article 311. The essential difference between retirement by way of penalty as provided for in rule 67 and other rules and retirement on attainment of period of qualifying service as provided for in rule 453A is that while removal under rule 67 and the other rules is always by way of penalty, retirement under rule 453A is not at all by way of penalty. The reasons for which a person may be retired under rule 453A are not specifically mentioned in that rule. The general reason given is that it is not in the public interest to retain



the services of the officer concerned any longer. The reason why a person's continuance may not be in the public interest may be wholly unconnected with any misconduct on his part. It is true that the retirement under rule 40(4) may be taken recourse to because of some misconduct or lack of an officer who has already put in 15 years of service, but the question is whether the retirement contemplated under that rule is intended to be by way of compensation or not.

It has to be noted that rule 48(4) speaks of retirement after completion of a sufficiently long service. If it were awarded to be a provision by way of punishment it could not well have thought to be applicable to a person at any period of his service. The compulsory retirement after a sufficiently long period of service is in contrast of the clause of retirement upon the attainment of a particular age that is to say the age of superannuation. This is also to say that the two retirement is a different. No doubt there are different requirements—one at the age of superannuation which is common to everybody and the other at an earlier age but even so the first case a servant can be retained in service for a further time for reasons to be recorded. Retirement under rule 48(4) is to be for some reason, i.e. the retention of the servant concerned not being in the public interest; and yet when all this has been said the two sorts of retirement are essentially different from the removal spoken of in rule 48 or which may be imposed by way of penalty as punishment. The effect of rule 48(4) and the fundamental rule 48 taken together is that civil servants normally retire at the age of 58; that their services may be retained for special reasons to be recorded; and similarly their services may be terminated earlier after completion of 25 year-of-service for special reasons. In our opinion though rule 48(4) is on the border line between the rule of removal in rule 48 and retirement.

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under the fundamental rule 14, it pertains more to the manner in which a person is dismissed under rule 45. Jurisdiction of the words "dismissed, removed and reduction in rank" in Article 111 shows that removal is of a special nature as compared and reduction in rank is similar to Article 141<sup>2</sup> between removal and reduction in rank. Both of which are punishments.

In our opinion, removal also therefore, appears to be by way of punishment. Consequently, it must be held that a retirement under rule 45A is not a punishment unless the word removal in Article 111 is given wider scope for word removal in Article 111.

This view is consistent with almost all the cases cited so far by the various High Courts in India except one case. The cases in support of this view are *Jagdish Prasad v. The State of Uttar Pradesh* (3), *Delivering the judgment of the Bench*, was observed by one of us—

Article 111 applies only to a case in which a person is dismissed or removed or reduced in rank.

These are technical words and in cases in which a person's services are terminated for inefficiency.

They do not apply to cases in which a person's period of service terminates in accordance with the conditions of his service.

The same view was taken in *Karnal Singh v. Haryana Sahas* (7), *State of Karnataka v. Balakrishna Jankar* (8), *Thakkar* (9) and *Chaitan Keshavnagar Singh* (10). The decision in *C. Krishnaswami v. The General Manager, South Indian Railway* (5) is not contrary to the view that we have taken. In that case a manager of the South Indian Railway was served with a notice under rule 7 of the Railway Services (Regulating) and Pension Scheme) Rules 1949 and he was dismissed under that rule. The

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rule itself provided for termination of service of a *p. s.* man who was engaged in subordinate services. The service was given an opportunity to show cause against the charge framed against him but he contended that he was not given a second opportunity for showing cause against the action proposed to be taken against him. He therefore applied under Article 226 of the Constitution alleging that his dismissal was contrary to the provisions of Article 311. In argument *a.* was urged on behalf of the State that under rule 143(1) of the Indian Railway Establishment Code services could be terminated by giving a notice after a certain period but the court held that the services of the employee were not terminated under rule 143(1) though they could have been and as they were terminated under rule 143(2) and no second opportunity for showing cause against the action was given to him his dismissal was irregular. The facts of the present case are wholly dissimilar to the facts of that case. The only High Court which has taken different view is the Punjab High Court in three cases, namely *E. R. Kaur Devi v. The State* (1), *Jahar Das Malhotra v. The State of Punjab* (2), *Bharat Singh v. Punjab and East Punjab State Union* (3) and *S. Chand Singh v. The State* (4). These were all cases decided before the decision of the Supreme Court in *Sanku Chandra* case (5). The view taken was that the word removal includes a compulsory retirement under a rule of the State of Punjab similar to that embodied in rule 56A. The reasons on which the word removal is used and the grounds from which it is taken and the grounds of rule were not referred to. The main ground of decision was that there was no reason why the word removal should not be treated to have been used as a larger word. We have already shown the reason

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(1) A.I.R. 1960 P.W. 28.

(2) A.I.R. 1960 P.W. 30.

(3) A.I.R. 1960 P.W. 32.

(4) A.I.R. 1960 P.W. 34.

(5) A.I.R. 1961 P.W. 30.

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why it could not be taken to have been used in its large sense, and why it should be confined to cases in which removal is by way of punishment or penalty. The discussion of the word removal in *Beloch Ghoghre* case clearly supports our view that the word, removal, was intended to import the idea of punishment or penalty.

This leads us to the other part of the argument of the learned counsel for the applicant. According to him, rule 96A was not validly made and is not a mandatory rule at all and therefore the applicant's removal under this rule is invalid. His argument is that the Civil Service Regulations as which rule 96A comes, were not made by the Secretary of State for India in Council and only the rules made by the Secretary of State in Council could apply to the applicant who was appointed by him to the All India Service of Engineers and as such his removal was illegal. Before the Government of India Act, 1919 came into force certain rules and regulations applicable to the civil servants of the Crown in India had been made by various authorities. As these rules and regulations were not made under any statutory power it was doubted whether they were of any legal validity. It was therefore provided in subsection (4) to section 96B of the Government of India Act, 1919 as follows:

For the removal of doubts it is hereby declared that all rules or other provisions in operation at the time of the passing of Government of India Act, 1919 whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or orders made under this section.



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 Appendix 1

service appointed before the date thereof. This section did not empower the Secretary of State in Council to delegate his power to make rules regarding the pension to any other authority, and as the law already existed it has not been shown so in that rule 450A was an exercise of the amendment of the Act of 1919. Therefore subject to what follows rule 450A which in its present form was made in 1923 could not be said to have been a statutory rule or a rule made by the Secretary of State in Council pending on the application as such. The Secretary of State for India in Council however made certain other rules from time to time under sub-sections (2) and (3) of section 94B. These rules were in two classes: (a) the Civil Service (Classification Control and Appeal) Rules which were first made in December 1923 and were modified from time to time and ultimately published as rules of 1949 and modified subsequently as well and (b) Fundamental Rules. These latter are contained in section 2 of the compilation entitled Fundamental Rules and the supplementary rules issued by the Government of India in 1949 III Edition.

In rule 7 of the Civil Service (Classification Control and Appeal) Rules it is stated—

Where by these rules power is delegated to or conferred upon any authority to make rules regulating the classification, the methods of recruitment, the conditions of service, the pay, allowances and pensions, or the discipline and conduct of any class of the Civil Services specified in rule 14, the rules, notifications and orders by whatsoever authority made regulating those matters in respect of that class which were in operation on the date these rules were made shall remain in operation except in so far as they may be superseded by these rules or may be specifically amended or modified in any one

of the abridged power by the authority in which it is delegated.

Rule 78 of these rules lays down

Rules regulating the conditions of service, the pay and allowances and the pensions of members of the All India Service shall be made by the Secretary of State in Council.

Since by rule 78 of the abridged rules the Secretary of State in Council is conferred the power of making rules for regulating the conditions of service, the pay, allowances and pensions of members of the All India Service and he validated by rule 7 the present rules, by whatever authority made which were in operation at the time these rules were made, that it is so far as that they must be taken to have been recognised as valid by rule 7. Rule 7 therefore in our opinion improved the stamp of validity upon the Civil Service Regulations applicable to the All India services in respect of conditions of service, pay, allowances, and pensions that were in force on 15-5-19. This would include rule 161-A of the Civil Service Regulations. It follows therefore that rule 161-A of the Civil Service Regulations had become a valid rule as if it were made by the Secretary of State in Council when the action was taken against the applicant.

Reference was made in the comments by learned counsel for the petitioner to section 143 of the Government of India Act read with section 230 thereof.

Section 147 laid down the conditions of service of all persons appointed to a civil service or a civil post by the Secretary of State and section 230 laid down that the provisions of the law then prevailing concerning sections 147 and any rules made thereunder shall apply to any person who was appointed before the commencement of Part III of that Act by the Secretary of State in Council to a civil service of, or a civil post under the

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Section 147  
and Section 230  
of the Government of India Act  
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<sup>(10)</sup> Given as India is then apply to persons appointed to a real private or real public, the Economy of State

Section 41 referred to persons appointed after the commencement of the Act of 1942 and the effect of that Act was that the rules made by the Secretary of State in 1942 regulating the conditions of service of all persons appointed after the commencement of the Act of 1942 were to apply to persons who had already been appointed, all before the commencement of Part III of the Act by the Secretary of State in Council.

The effect of these sections was therefore merely to apply rules made by the Secretary of State in Council after the commencement of the Act of 1939 to persons appointed by the Secretary of State in Council both before and after the commencement of the Act of 1944. We are here not concerned with any rule made by the Secretary of State in Council under section 245 after the commencement of the Act of 1944. We are here concerned with rule 462A, which was made before the commencement of the Act of 1939 and which had been made by the Secretary of State in Council as a rule having been made by himself and validated as such by rule 7 of the Civil Service (Classification, Control and Appeals) Rules as already stated. It cannot therefore be said that rule 462A of the Civil Service Regulations was invalid or not applicable to the applicant by reason of its not having been made by the Secretary of State in Council.

It was never argued that rule 403A did not apply to the article in which the applicants' balanced accounts to the All India Service of Engineers. This contention was based upon rule-403 and 404 of the Civil Service Regulations. Rules 403 and 404 are embodied in Chapter XXV of the Civil Service Regulations which are applicable to Civil Engineers and Telegraph officers.



section 115 of this Chapter refers to compulsory retirement. Rules 447 and 448 are in this section. Rule 448 says:

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The compulsory retirement of Civil Engineers of the Public Works Department or the Engineering Department of State Railways who are proposed to be made for further advancement is regulated by Article 334-A. But any Civil Engineer of these Departments who on reaching the age of 55 years has not attained the rank of Superintending Engineer is liable to be called on to retire by the Government of India.

Rule 448 says:

All Civil Engineers in the Public Works and Railway Departments Civilian Under Secretaries in the Public Works Secretariat of the Government of India or of a Local Government or Administrations and Engineers in the Superior Railway Revenue Establishment and in the Superior Establishments of the Telegraph Departments are required to retire on attaining the age of 55 years.

Rule 449 is clearly a rule of retirement at the age of superannuation which is fixed as 55 years. Rule 449 is a rule of compulsory retirement before attaining that age—directly on the ground of retirement for further advancement as regulated by Article 334-A and secondly on reaching the age of 55 years—provided the person concerned has not attained the rank of Superintending Engineer. As the applicant has attained the rank of Superintending Engineer the second part of rule 449 does not apply to him. The first part of the rule does apply to him so does rule 448.

The argument is that since the first part of rule 449 which regulates permanent compulsory retirement

1947 before the attainment of the age of superannuation is  
 1948 applicable to members of the Service of Civil Engineers.  
 1949 It is specially provided for the general rule embodied in  
 1950 rule 465A is applicable to all services including the All India Service  
 1951 of Civil Engineers is embodied in section 465A. Civil  
 1952 Service Regulations would not apply to the All India  
 1953 Service of Civil Engineers. It is pointed out that where  
 1954 a special rule is provided in a statute or body of rules,  
 1955 that special rule has to be given preference to a general  
 1956 rule in the same subject. The proposition of law thus  
 1957 suggested by learned counsel for the applicant is not  
 1958 doubted but it does not apply to the person first but  
 1959 the simple reason that rule 465 does not deal with the  
 1960 subject which is dealt with in rule 465A. Rule 465  
 1961 deals with compulsory and permanent retirement for a  
 1962 specified cause sufficient for further advancement, which  
 1963 is dealt with in rule 465A of the Civil Service Regula-  
 1964 tions.

Rule 465A on the other hand is a rule of superannuation after completion of 22 years of service when it is considered that his retirement in the interest or for the public interest. The two rules deal with different matters though both of them may apply in the case of a particular individual at one and the same time. We do not think that rule 465A is in all affected by rule 465 in the case of Civil Service of Engineers.

That it was not that rule 465A must be deemed as having been abrogated or cancelled by rule 465 of the Regulations before Rule 46 provides the compulsory retirement on the attainment of the age of superannuation which has been fixed at 65 years. It also provides that a person must be retained as servant after that age up to the age of sixty if his services are to be efficient. He must not be retained as servant after that age except in very rare circumstances and with the

commission of the local Government. The rule also provides for compulsory retirement of Civil Engineers of the Public Works Department who have reached the age of 50 years. They may, however be required by Government to serve on reaching the age of 50 years if they have not attained to the rank of Superintending Engineer. Rule 35 does not deal with the subject matter which is dealt with in rule 485A and it cannot therefore be said that by reason of rule 35 rule 485A should be deemed to have been cancelled or abrogated.

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It was urged on behalf of the State by the learned Advocate General that even if Article 311 of the Constitution applied to the case of retirement under rule 485A, reasonable opportunity was in fact given to the applicant by that Court. The case was that Article 311 speaks of only one opportunity to be given to the civil servant before punishment. It does not speak of any opportunity being given at the time of investigation of the charges against the person concerned. In support of his argument learned Advocate General referred to certain observations in *J. M. Lal's* case (7). In that case their Lordships pointed out that—

Section 3(5) of section 145 of the Government of India Act 1935 was not amended so far and was not a reproduction of rule 35 Civil Service (Classification, Control and Appeal) Rules framed under section 95B Government of India Act 1934 which was left unaffected as an administrative rule. Rule 34 is concerned that the civil servant shall be informed of the grounds on which it is proposed to take action and is afforded him an adequate opportunity of defending himself against charges which have to be reduced to writing, that is in marked contrast to the narrow provisions of

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a reasonable opportunity of showing cause against the views proposed to be taken in regard to him. No view is proposed without the warning of the sub-jury and a definite conclusion has been come to on the charges and the actual proceedings, as follows, is personally determined on. First in this stage the charges are imposed and the suggested proceedings are merely hypothetical. In a second stage being reached, that the matter goes to the trial - namely, the opportunity for which witnesses (B) makes provision. There is no difficulty in the witness opportunity being reasonably afforded at more than one stage. If the civil system has been through an inquiry under rule 2, it would not be reasonable that he should not, for a repetition of that stage, if only to ensure our law that would not abrogate his witnesses right, and he would still be entitled to represent against the proceedings proposed in the event of his breaking off the inquiry.

In the regard on the issue of this statement that under Article 1(1) (f) the natural opportunity which is required to be given, is against the action proposed to be taken which means against the proceedings proposed to be imposed and that once it was not necessary to give an opportunity to lead evidence or to defend oneself by tendering evidence or advancing argument it was enough that an opportunity of submitting an explanation was given which was considered in the post-trial case.

It was noted that the phrase "showing cause" does not necessarily imply that an opportunity must also show the opportunity of submitting an explanation need be given. This contention in our opinion is not well founded. The phrase "showing cause" has

here the subject matter of discussion is more than one case in the Court. In *Amal Nath Prasad Singh v. State of U. P.* (1) it was held that where an opportunity is required to be given of showing cause the opportunity must be adequate. Enabling a mere representative to be made is not the same thing as giving an opportunity of showing cause. The expression "showing cause" was considered to embrace an opportunity of leading evidence in support of one's allegations and in controverting such allegations as are made against one. This was followed in *Ravi Prasad Narain Singh v. The State of Uttar Pradesh* (2). In that case the question was referred before us on the basis of the observations made by the Privy Council in *I. M. Lall's* case was also advanced. But it was rejected and the Bench deciding that case dealt with this observation in the following words:

It cannot be held that these Lords have overruled to say that at the subsequent stage when a civil servant was called upon to show cause under sub-section (5) of section 116 Government of India Act 1919, he need not be given any opportunity at all to give evidence. All that these Lords have said was that it would not be reasonable that the civil servant should ask for a repetition of the enquiry after had already been made under rule 14 if that enquiry had been duly carried out. This remark does not exclude the right of a civil servant to give any evidence which he may now have been appropriately required to give at the stage of the earlier enquiry under rule 14. In fact the remark, that it would not be reasonable that a civil servant should ask for a repetition of the enquiry held under rule 14, would appear to

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Mr. J.  
Grewal, Esq.  
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April 1945

JOINED an explanation that if there had not been earlier inquiry duly carried out, it would have been held that the civil servants had a right in this subsequent stage to adduce evidence when showing cause why the proposed action should not be taken against them. The view of their Lordships of the Privy Council in that case therefore only go to confirm our view.

We respectfully agree with the view. In our opinion the explanation showing cause as used in Article 311 does not imply that a mere opportunity of submitting an explanation is enough. It implies that adequate opportunity of leading evidence in support of the contention of the person concerned and controverting the contention as set against him must be given, and where sufficient opportunity of cross-examining witnesses of the other side and of adducing arguments should be afforded. For such thing was done in the present case.

Though reasonable opportunity of showing cause against the action proposed to be taken against the applicant was not given, the order of the 17th of April 1947 having been passed under the provision of rule 991A of the Civil Service Regulations, no such opportunity was necessary because the compulsory retirement contemplated under that rule is not covered by Article 311 of the Constitution.

The result, therefore, is that the application fails and is dismissed. In the circumstances we direct the parties to bear their own costs.

Mr. Gopi Nath Kauray on behalf of the petitioner prays that a certificate may be given to the applicant to the effect that the case involves a substantial question of the interpretation of the Constitution and is otherwise a fit case for appeal to the Supreme Court. We think

that the case involves a substantial question of the interpretation of the Constitution and we also think that it is otherwise a fit case for appeal to the Supreme Court. We therefore grant the certificate prayed for.

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Given accordingly.

## CIVIL MISCELLANEOUS

Before Mr. Justice Datta and Mr. Justice Mukherji

DURGESHWAR DAYAL SETH (Appellant)

VERSUS  
THE

THE SECRETARY BAR COUNCIL ALLAHABAD

AND OTHERS (Opposite Parties)

Bar Councils State Amendment Act, 1926, of which were the Uttar Pradesh State Legislature—High Courts Amendment Order 1926 of 1926—Whether contemplation of law of Bar Council

The Bar Councils State Amendment Act is ultra vires the Uttar Pradesh State Legislature as Parliament has the exclusive power to make laws with respect to matters included in Entry 55 of List I as well as Art. 245 of the Constitution of India.

Cl. 1(3) of the Amendment Order does not contemplate the revision of a new Bar Council and jurisdiction of a set off of members of the new High Court.

Leave to proceed.

Civil Miscellaneous No. 55 of 1931

The facts appear in the judgment.

A. P. Pandey, Counsel Bahadur and S. A. Farooqi for the applicant.

The Advocate General (A. L. Murali) for the opposite parties.

Order, J. —This is an application for the Disqualification of Dayal Seth for the issue of a writ of mandamus to the opposite parties directing them to include his name in

the new roll of Advocates without his paying any fees of costs. The application is opposed by all the three opposite parties.

The applicant who was called to the Bar on the 18th November 1936, enrolled as an Advocate of the High Court of Judicature at Allahabad on the 23rd February 1937 and his name was duly entered on the roll of Advocates of the same High Court under section 6(2) (i) of the Indian Bar Councils Act, 1926. He has been practising regularly in the High Court. In 1948 the Government of India issued the United Provinces High Courts Amendment Order 1948, amalgamating the High Courts of Judicature at Allahabad and the Chief Court of Agra and establishing a new High Court, though retaining the old name of the High Court of Judicature at Allahabad and giving a right to all Advocates who were entitled to practise either in the High Court at Allahabad or the Chief Court of Agra to practise in the new High Court. The Uttar Pradesh Amendment to the Indian Bar Councils Act, 1926 in 1949. The effect of the amendment was that the old Bar Councils of Allahabad and Agra were dissolved and provision was made for the creation of a new Bar Council for the new High Court. The Uttar Pradesh amendment to act under section 7 of the Indian Bar Councils Act, raised a question on the 21st May, 1952 applying the provisions of sections 7 to 15 of the Bar Councils Act to the new High Court with immediate effect. The Uttar Amendment Act provided that until a Bar Council had been established for the new High Court, the Chief Justice would establish an ad hoc Bar Council. Accordingly, one of the Bar Councils was established by the Chief Justice. Its Secretary issued a notice on the 5th January 1953 demanding a sum of Rs. 10 from the applicant and other Advocates for entering their names in the new list of Advocates to be per-

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and called to  
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passed by the new High Court. Another notice was issued by the Joint Registrar of the new High Court informing the applicant that unless he paid the sum of Rs. 10 his name would not be placed on the new roll of Advocates. The petitioner carried through this application that he has already paid the sum of Rs. 10 when he got his name entered on the roll prepared for the old High Court of Judicature at Allahabad that he ought to be required to pay the sum again that it is the duty of the new High Court to include his name on the new roll of Advocates without demanding any payment from him and that he is entitled to be recognised as an Advocate of the new High Court and to practise there. It was further contended that the State Award made Act of 1924 was ultra vires the State Legislature.

The Secretary of the ad hoc Bar Council, opposing para. no. 1, has filed a written argument opposing the application. He maintained that the notice demanding Rs. 10 from the applicant is correct and that the applicant is bound to pay the amount if he wants his name to be entered on the new roll. He added, however, that his duty was simply to accept the money that was paid to him and inform the Registrar of the fact of the payment and that the roll is to be prepared by the Registrar and not by himself.

The Indian Bar Councils Act, 1926, was enacted by the Indian Legislature to provide for the constitution and incorporation of Bar Councils for various courts. The Act extends to all the provinces of India. Under section 1(2) it was made applicable to certain High Courts of Judicature including that at Allahabad and to such other High Courts within the meaning of clause (24) of section 3 of the General Clauses Act, 1897, as the Provincial Government by notification in the official Gazette declare to be High Courts to which the Act applies. Sections 1, 2, 17, 18 and 19 of the Act came into force at once

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and by section 1(3) the Provincial Government was empowered by notification to direct that the other provisions of the Act would come into force in respect of any High Court in which the Act applies on such date as it may by the notification appoint. The main provisions of the Act are as follows. Under section 1 for every High Court a Bar Council would be constituted which was to be a body corporate having perpetual succession. Section 3 lays down that no person shall be entitled as of right to practice in any High Court unless his name is entered in the roll of the Advocates of the High Court constituted under the Act, and requires the High Court to prepare and maintain a roll of Advocates of the High Court. In the roll are to be entered the names of all persons who were as Advocates, etc., entitled as of right to practice in the High Court some time before the date on which section 3 comes into force, provided that they paid a fee payable to the Bar Council of Rs 10. Also the names of all other persons who have been admitted to be Advocates of the High Court are to be entered in the roll on payment of such fee as may be prescribed. The High Court is required to send to the Bar Council a copy of the roll. This is also provided in section 4. The Bar Council is authorised to make rules to regulate the admission of persons to be Advocates of the High Court vide section 5. The High Court is given the power in section 10 to punish an Advocate for misconduct; the enquiry into the allegations of misconduct is to be made by a committee of the Bar Council. Every person whose name is entered in the roll of Advocates is entitled as of right to practice in the High Court of which he was Advocate vide section 14. Power is given by section 14 to a Bar Council to make rules in respect of the rights and duties of the Advocates of the High Court and their discipline and professional misconduct. When sections 3 to 15 are applied to any High Court, the Legal Practitioners Act

At 1478 (encl.) amended to the extent and as the answer specified in the schedule of the Act and if there is any other agreement with these provisions in the Letters Patent, they are deemed to have been specified so that

On the passing of the above Act the Provincial Government issued a notification under section 141 applying the rest of the sections of the Act to the High Courts then existing (the High Courts of Judicature at Allahabad which had been re-opened up as the old High Court) and the Chief Courts of Amritsar and the Comwards were established for them. The applicant got himself selected as an Advocate on payment of the fee and his name was entered on the roll prepared by the old High Court of Allahabad. Later on when he acquired the right to practice in the old High Court.

By the Amalgamation Order of 1948 the old High Court and the Chief Court of Assam were amalgamated and the two constituted one High Court. As both will be known as the new High Court, bearing the name as it is the old High Court. Clause 8 of the Order provided that any person who was an Advocate entitled to practice in either of the High Courts would be recognized as an Advocate entitled to practice in the new High Court. Clause 12 of the Order repealed the Letters Patent of the old High Court. The last clause 16 is to the effect that the Order will have effect subject to any provisions that may be made with respect to the new High Court by any legislature or authority having power so make such provision.

The effect of the Amalgamation Order was to create a new High Court as a substitute for the old High Court and the South Coast Court. The Order did not merely extend the geographical jurisdiction of the old High Court by adding to it the territory that was within the jurisdiction of the South Coast Court.

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- (a) I think it did not expressly state in the two cases. One was the effect of the provisions in clause 2. When the new High Court was inaugurated in November 1, 1951, High Court it means that the new High Court is being introduced and in that place a new High Court was created. As clause the new High Court was given the same name that was borne by the old High Court. It could very well have been given a different name and then there could have been no doubt about the fact that a new High Court was created. The Order dissolved of both the Courts in the same manner. If the Chief Court of Assam was abolished in 1951, the old High Court also was abolished in 1951. There was nothing in its provisions to suggest that with the Chief Court of Assam was abolished and that the old High Court continued though with extended territorial jurisdiction. The new High Court was in its jurisdiction as to such other places as Uttar Pradesh, as the Chief Justice may appoint. The fact that it is to be as Abolished does not mean that it is a continuation of the old High Court.

When the new High Court was created, the Bar Council which had to be intended and at least a provision for the dissolution of the Bar Councils of the old High Court and the Chief Court of Assam had to be made. It is mentioned in the Statements of Objects and Reasons published in the L. P. Gazette extraordinary dated the 27th March 1950 that it was necessary to amend the Bar Councils Act partly for the purpose of providing for the dissolution of the old Abolished and Assam Bar Councils and partly to provide for the re-constitution of a Bar Council for the new High Court; that the Indian Bar Councils (U. P. Amendment and Yadda not of Proceedings) Ordinance, 1949 had expired and it was necessary to retain permanently on the statute book some of its provisions that opportunities were taken

to make some additional provisions in the Act to provide for a more representative and expanded Bar Council and to make it a permanent body and also make the establishment of a new Bar Council subject to a certain provision was made for an old Bar Council. The important provisions of the Amendment Act are the following: Section 3 deletes the old Allahabad and Awadh Bar Councils with effect from 1<sup>st</sup> October 1948 and provides for the establishment of a Bar Council for the new High Court. Until a Bar Council has been established for the new High Court, the Chief Justice has been given power by section 4 to establish an old Bar Council. Section 6 deletes the word "Allahabad" from section 112 of the principal Act and adds the words "and the High Court of Judicature at Allahabad constituted by the U. P. High Court (Allahabad) Order, 1948" after the word "Punjab". The effect of this change (as is to make the principal Act applicable to the new High Court. Of course it was open to the Provincial Government to advise that although it was making a modification in the Constitution in relation of the power conferred by that very provision declaring the new High Court to be a High Court in which the Act applies. That act of the Provincial Government could not have been questioned on the ground of jurisdiction at all. But presumably because the Provincial Government wanted to make amendments in the principal Act by providing for the various criteria, it decided to pass an Act instead of making a modification making it applicable to the new High Court. Under section 112 of the principal Act, it had no power to make any modifications in the Act; the Act had to be applied to the new High Court as it stood or not at all. Section 4 of the principal Act dealing with the composition of Bar Councils was amended in the section 4 dealing with election of members. In section 5

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a new provision was made for the compulsory retirement of a certain percentage of members every third year before 10 makes amendments in section 6 dealing with the rule-making power of the High Courts. Section 11 validates all proceedings taken, orders made and acts done or omitted by the Allahabad Bar Council between the 26th July, 1949 and the 26th March, 1950. Section 12 permits the constitution of all courts or persons appointed by or against the Allahabad and Allah Bar Councils before the 19th October, 1949 and pending on that date. All property, funds and assets belonging to the two dissolved Councils are transferred by section 13 to the Bar Council of the new High Courts.

The Amendment Act having been passed when the commencement of the Government its validity is to be tested by Article 245. Under that Article Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule and Parliament and the Legislature of any State have power to make laws with respect to any of the matters enumerated in List III. List I is Law and the Union List and List III is the Concurrent List. The entry to be considered in List I is no. 78—constitution and organisation of the High Courts—personnel related to practice before the High Courts. The Amendment Act is not valid in the respect to any of the matters enumerated in List II (State List) and therefore it is left out of consideration. In List III there is entry no. 79—legal, medical and other professions. The matters dealt with in the Amendment Act are not covered by List III but a non-constituted on behalf of the applicants and counsel on behalf of the opposing parties that the matters dealt with in the Amendment Act are included in entry no. 78 of List I. It was not disputed that according to the provisions of Article 245 of the

ministry has proposed to entrust to the Bill of Law I. Further more has the exclusive power to make laws with respect to them and the Amendments Act passed by the Provincial or State Legislature would be invalid. The power of King to make laws with respect to any of the matters enumerated in List III is subject to the exclusive power of Parliament. If it has any, to make laws with respect to the same matters. If Parliament has the exclusive power a State cannot make laws even if the matters are enumerated in List III.

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The principle that a court has no legs in mud when deciding whether a legislation comes within an entry of one list or an entry of another list are well settled. The problem always involves two questions, one of the appropriateness of the entries of the two lists and the other of what the legislation purports to do. As regards the consequences to be placed upon the answer in the rival list it is to be assumed that the Union and the State laws do not conflict and every attempt should be made to avoid a conflict. If necessary, the meaning given to one entry should be restricted in order to avoid overlapping. The meaning given to a general power in one entry may be restricted to give sense and efficacy to a power given by use of exception under an entry of another list. At the same time general language ought not to be run down to the touch and important limitations. The words with respect to cover the whole field of legislation. In the *case of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938* (1) the Federal Court held that the Act was intra vires the Provincial Legislature because it was with respect to "trade on the sale of goods" entry no. 48 of the Provincial List and not to "duties of excise on tobacco and other goods manufactured or produced in India" entry no. 42





as already pointed out, it can theoretically pass. On page 14, the learned Court further proceeded:

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It is a fundamental assumption that the legs have powers of the Centre and Parliament could not have been recorded to be in conflict with one another. A general view is made not to be

another. A general power might not be so constrained as to make a willful of a particular power conferred by the same Act and operating in the same field when the making the former as a more restricted sense effect can be given to the latter as an ordinary and general power.

[illegible]

A condition may arise from the fact that route heads overlap as the groupings cannot be also head perfect. Whilst overlapping is unavoidable the provisions of section 146 operate (pursuing to section 145 of Government of India, Act series number in Article 146 of the Constitution).

In *State Board v. E. T.*, the Federal Court upheld the validity of the *Boher Law* (Amendment) Act of 1944<sup>1</sup> passed by a provincial legislature. By that Act possession of intoxicating liquor by any person subject to certain exceptions was prohibited. It was held that a power to legislate with respect to intoxicating liquors and narcotic drugs that is to say the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, given to the Provincial Law included the power to prohibit intoxicating liquors throughout the province. *Gwyn, C. J.* remarked on page 18 that:

A proverb is legitimate with respect to estimating liquid assets and will be expressed in water terms. The words *that is to say*, the production of other narrow drugs, were held to be equivalent.

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in discussion words and not words either of explanation or of instruction. It was said to be difficult to create a legislation with respect to intoxicating liquors and narcotic drugs which did not deal in some way or other with their production, manufacture, etc. and these words were said to be apt to cover the whole field of possible legislation on the subject. Nicholas writes in his *Australian Law Journal* p. 241, that the words "with respect to" include the complete nature of a legislative power.

The Madras General Sales Tax Act of 1896 passed by Provincial Legislature was held to be valid in *The Governor General in Council v. The Province of Madras* (19). The Act purported to levy a tax on first sale in Madras of goods manufactured or produced in India. It was held to come within entry no. 42 of the Provincial List, "taxes on the sale of goods," and not within entry no. 42 of the Federal List, "duties of excise on tobacco and other goods manufactured or produced in India." Lord Sumner observed on page 188:

It is right first to consider whether a tax in substance cannot be effected by giving to the language of the Federal Legislative List a meaning which, if less wide than it might in another context bear, is at least that can properly be given to it, and equally giving to the language of the Provincial Legislative List a meaning which it can properly bear.

The Act that was considered in *Wong Kooka Shing v. The King* (20) was the Boundary Abolition Act which prohibited without permit or licence possession of any arms and or keep on estate of a certain quantity. The Federal Court held that the Act was validly passed by the State Legislature because it was an aspect of the State's power to regulate the



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Para. 401.] observed in the case of *Belton* (1) in para. 322 that

It is well established that the validity of an Act is not affected if it incidentally touches on matters outside the provincial field and therefore it is necessary to inquire in each case what is the gist and substance of the Act.

The gist and substance or the true nature and character of an Act is ascertained for the purpose of determining whether it is with respect to matters in this list or otherwise valid, p. 322. In *Attorney General for Ontario v. The Attorney General for Canada* (7) the Judicial Committee held that

When the test is ambiguous as for example when the words constituting two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act.

This observation was relied upon by Gauthier, C. J. in the case of the *Canada Petroleum and Natural Resources Board* of *Electric Power and Light and Telephone Trusts Act* (8).

Judging the matter in the light of the principles laid down above I have no doubt that the Amendment Act is a legislation with respect to persons entitled to practise before the High Courts, para. 78 of Law I. The principal Act and the Amendment Act both are legislations with respect to Advocates who are persons entitled to practise before High Courts. The Amendment Act comes within para. 78 of Law III but the real question when there is said to be a conflict between Law I and Law III is whether the legislation comes within Law I or not. If it comes within Law I, Parliament has the exclusive power even though it may not within Law III as well. The provision in para. 78

(1) [1953] 1 S.C.R. 300.  
(7) [1953] 1 S.C.R. 1.

(8) [1953] 1 S.C.R. 100.

If Law I is the way of an exception to entry no. 26 of List III. The power conferred by entry no. 26 of List III is general but since there is a power conferred by entry no. 78 of List I with respect to persons entitled to practice before the High Courts, the general power must be read subject to that power and a legislation with respect to Advocates must be held to cover entry no. 78 of List I regardless of whether it comes within entry no. 26 of List III or not. The Bar Council Act dealt only with Advocates who are the persons entitled to practice before the High Courts. The Amendment Act applied the whole Act with some modifications to the new High Courts. All persons claiming a right to practice before the new High Courts are governed by the Amendment Act. But for the Amendment Act they would not have been governed by the principal Act because it applied to the old High Courts which was in existence when it came into force and could not apply to the new High Courts established subsequently (unless the State Government issued a notification under section 133). Had the Amendment Act not been passed the persons claiming a right to practice before the new High Courts would not have been governed by the principal Act. It does not matter how the Amendment Act has made the principal Act applicable to them. It does not matter if all the provisions of the principal Act, which are made applicable to them have not been reproduced word by word in the Amendment Act. It does not matter if it has adopted its object simply by substituting the words "High Courts of India" for "Allahabad" contained in the 1<sup>st</sup> & 2<sup>nd</sup> High Courts Amalgamation Order in place of the word "Allahabad" in section 133 of the principal Act. The object of the Amendment Act is to apply the principal Act with some modifications to the persons claiming a right to practice before the Courts

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Thus, the form and substance of the two statutes, and  
dissemination of the Attornment Act is making a law  
regarding the rights and liabilities of persons entitled  
to practice before High Courts. The words with re-  
spect to persons entitled, etc. are wide enough to cover  
an legislation with respect to such persons. Legisla-  
tion which applies to all persons including persons en-  
titled to practice before High Courts may not be said  
to be legislation with respect to persons entitled to prac-  
tice before High Courts, but legislation which is exclu-  
sively applicable to such persons as regards their rights  
and liabilities is undoubtedly with respect to them.  
The Arms Act or the Motor Vehicles Act applies to all  
persons including such persons and therefore may not  
be said to be laws with respect to such persons. If such  
persons are discriminated by these provisions it is the  
incidental effect of them. The laws were not enacted  
to deal with them. They were enacted to deal with  
all persons and incidentally they became applicable to  
such persons also. But the Bar Councils Act and the  
Amendment Act dealt exclusively with persons entitled  
to practice before High Courts. The effect of the legis-  
lation felt by them was not an incidental effect. They  
were primarily intended to be applied to the Acts. I  
see no force in the contention of the learned Advocate-  
General that the words in 38 only refer to qualifica-  
tions required for practicing before High Courts. The  
words with respect to are wide enough to cover the  
whole field of legislation which primarily affects or im-  
munises persons entitled to practice before High Courts.

The learned Advocate-General relied on Article  
19(1)(g) and (d). All citizens have the right to join  
for any profession or to carry on any occupation. But  
this does not mean that the State cannot make any law  
relating to the professional qualifications necessary for  
practising any profession or carrying on any occupation.

in fact I have a copy so for Union agencies and associations for non-professional, vocational or technical training. The learned Advocate General considered on the basis of this provision that laws regarding qualifications only were contemplated to be on an all India basis and not taking the 15th words used in entry no 7B as the qualifications of persons entitled to practice before High Courts. Much because Parliament has the right to make laws with respect to Union agencies and associations for professional, vocational or technical training it cannot be said that Parliament has the right to make laws under entry no 7B only regarding qualifications of persons entitled to practice before the High Courts. I see no distinction between entries nos 7A and 7B and do not think that any light on the interpretation of entry no 7B is shed by entry no 7A in Andhra Pradesh. Article 116(1) deals only with the question whether a certain law can be made or not and not with the question by whom it can be made.

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of use and in other ways. Section 18 deals with the loss of the right to pass on before the High Court is

It was contended by the learned Advocate General that the whole of the principal Act could not be enacted by the State Legislature. He said that since provisions of it could be enacted by it and others including sections 18. But he contended that the State Legislature not merely applied the provisions of the principal Act to the new High Courts and has not enacted those provisions. On the analogy of executive authorities extending the applicability of Acts made by legislatures beyond the area or the terms laid by the legislatures, he argued that the State Legislature has not made a law with respect to powers vested to pass on before the High Courts even though the effect of it is to make them governed by the principal Act with modifications. The contention is answered. There is absolutely no analogy between what has been done in the present instance by the State Legislature and what is done by executive authorities in extension of powers specifically conferred upon them by enactment. If a legislative power to enactment making it specially applicable to a particular area or for a particular period and empowering executive authorities to extend it to other areas or beyond the period originally fixed and the executive authorities issue an order extending its applicability to other areas or beyond the period originally fixed it may not be said that the Legislature has not made a law with respect to the other areas or for the extended period and it may not be said that it is the executive authorities who have made a law with respect to the other areas or for the extended period. But when a legislature itself extends and after going through all the legal tests declares its own law valid even though it may be in the form of adopting some law passed by some other legislature for some other area it is impossible to say

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that it has not made a law. In the former case the appropriate legislature has made a law, which may be applied to other areas or beyond the period originally tried by it and has left it to the executive authorities to determine those areas or the duration of the extended period; in the other case no such law has been made by a legislature enacting the adopted law. No authority has shown to us to which it might have been held that even when an enactment is made with due legislative formalities by a legislature it has not made a law. In the present instance the principal Act did not empower the State Legislature to apply its provisions to other High Courts by simply passing a resolution. The State Legislature did not pass the Amendment Act in exercise of any power conferred upon it under the principal Act. Therefore neither can it be urged that the legislature enacting the principal Act has conferred its power upon the State Legislature, nor can it be urged that the State Legislature by passing the Amendment Act has now made a law, but simply exercised a power conferred upon it. When executive authorities enacted the application of an Act in pursuance of a power conferred by the Act the whole law is deemed to have been laid down by the legislature passing the Act and the executive authorities are simply deemed to have exercised the power and not made a law. But when a State legislature makes an enactment not purporting to do so in exercise of any power conferred upon it by another enactment and expends its amount of its law-making power it cannot be said with any show of reason that it has done an executive act and not a legislative act. Much because the doing of an act by the executive authorities is held in certain circumstances to be an executive and not a legislative act, it cannot be said that whenever that act is done by a legislature it is not a legislative act.

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The new sentence of the learned Advocate General was: if I have understood him correctly, that enacting a law adopting some law previously made by another legislature even with modifications is not making a law with respect to the matters dealt with in the previous law. Thus, law that is made by a legislature in order to be effective must be within its powers. What laws are within the powers of which legislatures in Poland took hold down in Article 546 of the Constitution. A State legislature has power to make laws with respect to such cases matters that are exclusively reserved and in Laws II and III and has no power whatsoever to make laws with respect to the matters that cannot be found in them. A State legislature has no legislative powers in all. Adopting a law made by another legislature is not a matter to be found in Laws II and III. Therefore no law made by a State legislature can be justified on the ground that though it is not within its power to act on the matters dealt with in Laws II and III it is simply adopting a law validly made by another legislature. It has been held down one must have regard to the substance and not to the form of the enactment. Even though the form may be that of adopting a law made by another legislature in substance it is a law with respect to the matters dealt with in the adopted law. If a State legislature has no power to make a law with respect to these matters it has no power to adopt that law. If a legislature cannot do anything directly, it cannot do it indirectly. If a State legislature cannot directly enact a law with respect to a certain matter it cannot do so indirectly by simply adopting a law made with respect to it by another legislature.

In the present case the State Legislature has not merely adopted a law made by another legislature, it has made substantial modifications in it. Thus the

even to amend their view of adopting a law as de facto legislative. When executive authorities are empowered to extend an Act beyond a certain date on a certain period with such modifications as they may think fit, and then extend it with modifications even then the act is held to be an executive act and not a legislative act. Why, then, is because the modifications are presumed to have been within the framework of the Act. In *re The Delhi Laws Act* (1924) (1) *Pass. Act. 1*, read on page 810.

The modifications are to be made within the framework of the Act and they cannot be such as to affect its identity or structure or the extent of purpose to be served by it.

In this case, the power of introducing necessary amendments and modifications is essential to the power to apply or adapt the law. The modifications offered to the State Legislature in the Amendment Act have ever stood on a different footing. The State Legislature was bound by no rule to make any such modifications as were within the framework of the principal Act. Besides the discretion given to modify an Act a duty to be by no means absolute or irreversible in the strict legal sense. The Legislature is thought as a free body to see how the powers which it has conferred are being exercised, and if they are exercised injudiciously or otherwise than in conformity with its intention or their results are any consequences it can always by another Act recall its powers. (*See E v. Bhaba* (2) 141 in 12 *The Delhi Laws Act* (1).) The State Legislature when it enacted the Amendment Act was under no such check by the former Legislature that had passed the principal Act. Therefore it is not possible to apply the doctrine of such delegation as in *re The Delhi Laws Act* in the present case and hold that the State Legislature will not make a law by passing the Amendment

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Act. When it was not empowered by any other legal  
 agency to proceed it could not possibly have proceeded in  
 an exercise of the legislative powers conferred by  
 Article 208. It could not claim to have proceeded in an exercise  
 of powers conferred by any enactment.

I hold the Amendment Act to be ultra vires the  
 1. P. State Legislature.

The Amendment Order claims that it has been  
 the intention of the Indian Law Commission and the  
 existing High Courts by whatever name still exists  
 the current authority supreme by comparison to other  
 courts in the new High Courts. It is also contended  
 on behalf of the respondent that the reference to  
 the High Court of Judicature in Allahabad in section  
 11(1) of the principal Act would be construed in refer-  
 ence to the new High Courts that consequently the  
 principal Act would apply to the new High Courts and  
 the provisions of the Amendment Act were declared to be  
 ultra vires the State Legislature it would make no  
 difference and the application would be bound up with  
 the fact of its having been made to be entitled to be  
 valid. The Amendment Order is in force effect, subject  
 to any provision that may be made on or after the  
 appointed day with respect to the new High Courts by  
 any legislature or authority having power to make such  
 provision. (see clause 12). As the Amendment Act has  
 been held to be ultra vires and as no other provision has  
 been made by any legislature or authority having power  
 to make such provision, the Amendment Order is  
 ultra vires. It follows that section 1(2) of the  
 principal Act takes in the new High Courts. But this  
 does not mean to be the sole effect, it has not the effect of  
 conferring a power upon the new High Courts to do. Both  
 existing and the old High Courts are empowered to do.  
 Whether the words "The High Court of India"

used at Allahabad and used in the Act they may be interpreted to refer to the new High Court but it is quite a different thing to say that whereas the old High Court was required to do this so the cases that came up in the new High Court as the result of this interpretation had clause 17(c). The provisions of the Act which require the High Courts in which a justice to sit certain are the words "High Court" and not "the High Court of Judicature at Allahabad". There are those provisions are not affected at all by clause 17(c) and there arises no question of the new High Courts doing upon as already what the old High Court was required to do. The clause simply interprets the words "the High Court of Judicature at Allahabad" and does not confer any powers upon the new High Court. There existed the Bar Councils at Allahabad and at Lucknow and so long as they were not dissolved, neither Bar Council could now be created. The provision did not contain any provision for dissolution of a Bar Council. There cannot possibly be two Bar Councils for the same High Court under the Act. Therefore even if it could be said that the clause empowered the new High Court to do over again all the acts that were to be done by the old High Court, the clause requires that a new Bar Council cannot be created so long as the old Bar Council exists. The provision in clause 18(2) of the Amalgamation Order says that:

(a) person who immediately before the appointed day is an Advocate entitled to practice in either of the existing High Courts shall be recognized as an Advocate entitled to practice in the new High Court.

Thus the Amalgamation Order itself preserved to all the Advocates the right to practice in the new High Court. Consistently with this provision it cannot be said that the right to practice in the new High Court

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depends upon their conclusion to a new Bill Council. The applicant had one right to practice in the old High Court, on the appointed day, and the process to clause 3.2, contained that right. (Clause 3.1) must be read as such a manner as to preserve that right. In other words, it does not contemplate the creation of a new Bill Council and preparation of a new roll of Advocates of the new High Court. If a new roll is not to be prepared, there must be questions of payment of any fee. If the applicant's right to practice in the new High Court contained by the process to clause 3.2) is secure, he would be dependent upon his paying any fee for the result I had from the Amalgamation Order. Does not authorize the preparation of a new roll of Advocates and the demand of a fee from those wishing to practice in the new High Court.

The application must be granted and a writ of mandamus should be issued to the opposite parties 1 and 2 directing them to include in return the name of the applicant in the roll of Advocates without his having to pay any sum of money. As the main dispute in the case is about the constitutionality of the U. P. Amendment Act and as it has been decided against opposite party no. 2. I think the applicant should get his costs of these proceedings from it.

MR. JUSTICE J. — I agree.

MR. JUSTICE CHAND—We allow the application and direct a writ of mandamus to be issued to the opposite parties 1 and 2 directing them not to demand any fee from the applicant for retaining his name in the roll of Advocates or, if a new roll is being prepared for including his name in it. The main dispute in the case is about the constitutionality of the U. P. Amendment Act and as it has been decided against opposite party no. 2 we direct that the applicant shall get his costs of these proceedings from opposite party no. 2.

Order accordingly.

# CRIMINAL REVISION

*Before Mr. Justice King*

GURJIA NATH

v

STATE

**Essential Supplies (Temporary Powers) Act, 1946 s 7(2) —**

*Order 10*

*1. Offences at offence under supply of essential commodities of essential supplies and other general exceptions.*

The respondent is a person under s 7(2) of the Essential Supplies Act, 1946, and is charged with a conspiracy to supply essential supplies and other general exceptions through the means of passing a bill to an account.

The facts are as follows:

Criminal Revision no. 76 of 1947 (from an order of L. P. Sengupta, Additional Sessions Judge II of Dacca dated the 12th November 1946).

The facts appear in the judgment.

A. A. Sen for the applicant.

Mr. La. Gupta for the Assistant Government Advocate for the State.

**§ 48.** —The applicant Gurja Nath has been convicted under section 7(2) (a) of the Essential Supplies Act for commission of the offence of conspiracy to supply essential supplies and other general exceptions through the means of passing a bill to an account. Under section 7(2) (a) of the Essential Supplies Act he has been ordered to pay a fine of Rs 100 and under section 7(2) (b) of the same Act the court has, in respect of which he is alleged to have committed the offence of the L. P. Foodgrains Control Order 1946, has been ordered to be delivered to the Government.





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him to six months rigorous imprisonment and to a fine of Rs. 1,000 or in default, to undergo further six months rigorous imprisonment. It had further ordered the forfeiture of the Rs. 50,000 sale proceeds.

The appellate court sustained the conviction of the appellant but reduced the sentence as mentioned above to 12 M. of rigorous that there were extenuating circumstances in the case. These extenuating circumstances were summarised by the appellate court in the following words:

I have already noted above that it is proved that the appellant left for Kanpur the very day of the disputed purchase and returned on the very day of the trial. These facts clearly provide an extenuating circumstance. There is also a fair possibility of there being accidental omission, or in other words, of the absence of any criminal intention. Taking into consideration these facts I think the sentence imposed on him by the trial court is rather harsh.

In view of the aforesaid finding, which was treated by him as an extenuating feature in the case, the lower court reduced the sentence.

Ganga Singh has filed the revision in the High Court against the said judgment and the learned counsel appearing on behalf of the appellant has not contested any of the findings arrived at by both the courts below. On the other hand, he has placed full reliance on the findings of fact arrived at by both the courts. He has strongly relied on the finding given by the lower appellate court to the effect that there is a fair possibility that the non-compliance with the requirement in the payment case was the result of an accidental mistake or omission, or in other words, of the absence of criminal intent etc. He has argued that this is not merely an



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in the present case and above all, in view of the feeling given by the latter syllabic mean, the syllabic should be acquired. Generally *mera* 1 is considered as an essential ingredient of a criminal offence. In some cases the statute expressly mentions the particular kind of *mera* 1 can be by using words like intention, knowledge or belief in the definition of the offence itself. In other cases, it is not mentioned in the statute at all. The fact that the statute is silent on the point does not however mean that it is needed to eliminate the significance of *mera* 1 from the definition of the offence. What *mera* 1 is implied in every offence except where it is expressly excluded in the statute itself or where the offences themselves belong to that limited group of offences which do not call for consideration of *mera* 1. The idea underlying the doctrine of *mera* 1 is embodied in the maxim '*actus non facit reum nisi mens sit rea*' according to which the *mens* and the *actus* must both concur to constitute a crime.

In the crime consists of two elements—*actus* 1 and *mens* 1. *Actus* 1 represents the physical aspect of crime and *mens* 1 represents its mental aspect. If the former can be called its body then the latter may be termed as its spirit. *Actus* 1 has been defined as 'such result of human conduct as the law seeks to prevent'. *Mens* 1 is a broad term of elastic significance and covers a wide range of mental states and conditions, the existence of which would give a criminal liability to *mens* 1. Sometimes it is used to refer to a foresight of the consequences of the act and in other times to the act per se irrespective of its consequences. In some cases it stands for a criminal intention of the deepest dye such as a trouble in a deep-seated and premeditated murder committed with a full foresight of its fatal consequences. In other cases



This transformation, however, is not achieved at one stroke, but is a result of slow and gradual development. The course of evolution provides reasons of conflicting rulings depending on the various degrees of leniency offered by different judges to the importance of *mens rea* *post actum* *verum* and on the varying emphasis placed by them on the one or the other. The two leading English cases on the subject are those of *Rag v France* (1) and *Queen v Faldut* (2). In the former the emphasis was on *actus reus* and in the latter on *mens rea*. In the case of *Rag v France* the accused was indicted under a statute making it an offence to take an unmarried girl under the age of 18 out of the protection and against the will of another person having lawful charge of such girl. It was held that the mere fact that the accused honestly believed the girl to be over 18 or that she appeared to be so represented her self to be above the age of 18 was no defence. In this case the penal statute was strictly construed.

On the other hand a liberal view of the interpretation of the penal statute was taken in *Queen v Faldut* (2) in which a woman was indicted of larceny. It was held a good defence in her part that at the time of securing the material for the larceny, believed on reasonable grounds that her husband was dead.

Winn. J observed as follows:

"France joins the statute was enacted when the case was brought within its terms, and is then lay upon the defendant to prove that the violation of the law which had taken place had been committed accidentally or innocently so far as he was concerned." (178)

In another part of the same judgment Winn. J made the following significant observations:

"At common law an honest and reasonable belief in the existence of circumstances which, if true

implies  
 $\frac{\text{mens rea}}{\text{actus reus}}$   
 $\frac{\text{mens rea}}{\text{actus reus}}$   
 $\frac{\text{mens rea}}{\text{actus reus}}$

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would make the act for which a person is charged an innocent act but always been held to be a good defence. The doctrine is embodied in the somewhat unattractive maxim, *error non facit reum nisi error sit*. Honest and unavoidable mistake equals an act on the same footing as absence of the necessary facts, as an infirmity, or perversion of the faculty, or an insanity. (181)

In this judgment he also made a reference to the leading case of *Reg v. Pinner* (1) often cited in support of the opposing view and observed that at that time it was not suggested by any of the judges that the exception of honest and reasonable mistake was not applicable to all offences whether creating or consuming legal or moral liability.

In the same case BRUNNEN, J. laid down the principles on the following words:

The full definition of every crime must run expressly or by implication a proposition to the effect of guilt. Therefore if the material elements of any offence alleged to be a crime is proved to have been absent in any given case the crime is defined is not committed.

In all cases whatever compassionate age, sex, and some degree of freedom from some kinds of coercion are assumed to be essential to criminality, but I do not believe they are ever introduced into an offence for which any particular crime is defined. (182)

His further words on the charge were—

In every case knowledge of fact is an *actus reus* as elements of criminality as much as with *mens rea* and intent. To take an extreme illustration can any one doubt that a man who through

he might be perfectly well convinced what would otherwise be a crime in a state of unconsciousness would be excused as he acquiesced. And why, is this? Simply because he would not know what he was doing. (187)

187p  
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The apparent conflict between *Reg v Prince* (1) and *Queen v Jodice* (2) is however capable of being resolved if it is remembered that the act which was the *actus reus* of offence in *Reg v Prince* (1) was intentionally wrong. This would satisfy the requirements of *mens rea* for the offence and not be an offence in itself. So long as the act is wrong in itself the person committing it takes the risk and does it at his own peril.

The next case which may be usefully referred to in the context is that of *Shivani v The Rector* (3). In this case the word 'knowingly' which usually fixed a plea in the offence was omitted from it and from this fact it was argued that the omission of the words was to displace *mens rea* from consideration. Dealing with this point Day, J. observed as follows:

An argument has been based on the appearance of the word 'knowingly' in sub-section 1 of section 16 and its omission in sub-section 2. In my opinion the only effect of this is to shift the burden of proof. In cases under sub-section 1 it is for the prosecution to prove the knowledge while in cases under sub-section 2 the defendant has to prove that he did not know. That is the only difference I draw from the insertion of the word 'knowingly' in the one sub-section and its omission in the other. (191)

(1) [1986] 1 Cr. App. Rep. 121 (Q.B.) (1986) 82 Cr. App. Rep. 121 (Q.B.)

(1954)  
 AIR 1954 SC 101  
 101-102  
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The following remarks from the judgment of MAITRA, J.  
 at the same time are also relevant:

There is a presumption that *mens rea* is an essential ingredient, or a knowledge of the consequences, of the act is an essential ingredient in every offence, but this presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals and both must be considered. (Woolley v. Miah (1937) 31 All 1011.)

Dealing with the question as to how far the statute can abrogate the principles of common law in this regard Kailash in page 58 of his well known Treatise on Crimes (Vol. I, 1946 Edition) has expounded the law in the following words:

Statutes dealing as to the power of the Legislature to abrogate the rules of the common law have long been less discussed and the masters doctrine of the absolute and total authority of statute is hardly and beyond all question established in the law of England. Nevertheless it is an established rule that statutes should be construed so as to avoid with the accepted rules of the common law rather than to conflict with them.

It is a sound rule to construe a statute in conformity with the common law rather than against it, except where and in far as the statute is plainly intended to alter the course of the common law.

On this principle of construction, there is a growing tendency in any statute create the ordinary inward element *mens rea*, is an essential ingredient.

In the Indian Penal Code there is a recognition of this principle in various forms in Chapter IV which commences a number of general exceptions to all offences.



According to section 76 I. P. C.

Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be bound by law to do it.

1861  
Criminal Law  
Section 76

Section 79 I. P. C. lays down

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.

Section 80 I. P. C. states that—

Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Section 81 I. P. C. recognizes the exception in favour of persons who, in doing an act, do cause harm, but do so without criminal intention and in order to prevent other harm.

Section 82 I. P. C., exempts a child under seven years of age from all criminal liabilities.

Section 83 I. P. C. exempts from criminal liability a child above seven years of age and under twelve who has not attained sufficient maturity of understanding to be able to realize the full implications of his conduct.

Section 84 I. P. C. exempts a person who is suffering from a disease of the mind from all criminal liabilities.

Sections 85 and 86 I. P. C. lay down conditions under which an intoxicated person can be exempted from criminal liability.

The above sections are cited as illustrations to show that the Indian Law has recognized the principle underlying mere error in various forms and ways and given

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effect is it. Under section 40 I.P.C., the exceptions enumerated in Chapter IV would apply not only to offences punishable under the Indian Penal Code but also to offences punishable under any statute or local law. Under section 41 I.P.C. a special law is defined as a law applicable to particular subject. Under section 42 I.P.C. a local law is a law applicable only to a particular part of the territories comprised in India. Under section 43 I.P.C. except where a statute otherwise appears words referring to acts cover slight offences. There is therefore no doubt that these exceptions would be applicable to offences committed under the Essential Supplies Act read with U.P. Proclamation Control Order 1948.

The above enumeration of law does not, however, mean that there cannot be any offence without *mens rea*. There are and there can be offences even without *mens rea*. The statute itself might be so framed as to indicate that *mens rea* was not to be considered as an element of a particular offence or the subject matter of the statute and in such case slight *mens rea* would exclude the application of *mens rea*. Further there are quasi-criminal offences in which the presence of *mens rea* might not arise or there might be offences in which compelling considerations of public policy might require its exclusion e.g. certain offences relating to administration of food or drugs. Again for example there might be petty offences punishable with fine such as a contravention of some municipal by-law in which *mens rea* might not play a part at all. The number of such exceptions however is a strictly limited one and the court will not extend the number of such exceptions unless it is clearly warranted either by words of the statute or by the circumstances of a constraining nature flowing from imperative considerations of public policy.

No doubt, in the present case, the statute is a net laid down and some run. On the other hand the provisions of the statute are mandatory. According to subsection 1 of Form 18 of the Income Tax Return required to maintain a regular closing account: (a) the opening balance on each day; (b) the quantities received by him on each day; (c) the quantities disposed of by him each day; and (d) the closing balance at the end of each day. The position, therefore, is that the statute has not specified any items as a part of the offense. At the same time the statute has not excluded items or other kindred exceptions which constitute an offense. Under the circumstances the necessary presumption of the applicability of items not mentioned. To my mind the effect of the statute of the omission of items not is merely so broad as to create a presumption of an omission and so shift the burden of proof on the accused to prove that he knows which are specified or well recognized exceptions.

Further, there is nothing in the subject matter of the Act or its aims or objects to warrant an inference to necessary implications. On the other hand there are a number of considerations pointing in the opposite direction and showing the importance of the careful scrutiny of items not in the adjudication of an offense contemplated by section 7 of the Internal Revenue Act, the most important of them being the basic nature of the penalty provided. An offense under section 7(1) of the Internal Revenue Act does not appear to be a petty one at all. Section 7(2) deals with offenses which are not punishable with fine only. An offense under section 7(2) of the Internal Revenue Act is punishable with imprisonment for a term which may extend to three years and the offender is also liable to lose an addition to the forfeiture of the property to the Government. In certain cases an offense under section 7(2)

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MONTANA, J. —This is a petition under Article 22B of the Constitution for the issue of a writ in the nature of habeas corpus.

The petitioner was detained on the 16th May, 1961 under sections 5 (3) (a) (i) of the Preventive Detention Act 1950. On the 26th May he was furnished by the District Magistrate with the grounds of his detention. Subsequently the case of the petitioner was referred to the Advisory Board, constituted under section 5 of the Preventive Detention Act which came to the conclusion that there was a sufficient cause for the petitioner's detention. Thereafter the Government by an order dated the 6th August, 1961, passed under sub-section (1) of section 12 of the Act directed that the petitioner continue to be detained for a maximum period of twelve months from the date of his detention.

The petitioner contends that his detention is illegal as the grounds upon which he was detained were vague and indefinite and did not disclose sufficient particulars to enable him to make an effective representation to the authorities.

The learned Deputy Government Advocate submits that even if the petitioner's detention were legally illegal it would not be so when the Advisory Board gave it its opinion that there was sufficient cause for his detention. The validity of this detention formed no real issue, cannot now be challenged in this Court.

Article 22 (4) (a) of the Constitution which is in effect in force, is as follows—

22 (4) So far as providing for preventive detention shall authorize the detention of a person for a longer period than three months unless—

(a) An Advisory Board consisting of persons who are or have been or are qualified to be

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appointed as judge of a High Court has reported before the expiration of the trial period of three months that there is no co-operative collection even by such persons.

The Article lays down a restriction on one law providing for personal decisions. Rules, that two states possess for the input by an Advisory Board constituted in the manner prescribed the consequence is that the law itself is so far as it pertains to such a decision beyond three months would be invalid with a proviso as to be found in section 2 of the Personal Decisions Act 1958 but neither that section nor clause (b) (2) of Article 22 constrains the Advisory Board a court of law to attempt on is the duty of determining whether a personal decision is legal. All that section 2 of the Act does is to constrain a body such as a House implies in a purely advisory body whose duty it is to advise the Government whether in its opinion there is sufficient cause for the continued detention of a particular person as patient. It opens no door therefore to any view open to our the President of the Court in determining whether the grounds upon which the prisoner was detained may fall the requirements of the law.

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in its affirmance by the Supreme Court in *Ross v. Ross*, 288 U.S. 1 (1933), case in which I have just referred. The Chief Justice delivering the judgments of the Court said:

PERSONAL DETENTION is a serious invasion of personal liberty, and such invasions adequately as the Constitution has provided against the improper exercise of the power must be judicially watched and enforced in the courts. In this case the prisoner has the right under Article 22(3) as interpreted by this Court by a majority, as he has asked with pertinacity of the grounds of his detention sufficient to enable him to make a proper motion which on being considered may lead to his release. The use of opinions that this Court's several requirements were he complied with respect to each of the grounds communicated to the person detained, subject of course to a claim of privilege, under clause (3) of Article 22.

In my opinion the prisoner's detention cannot be held to be in accordance with the procedure established by law and he is entitled to be released. I would direct that he be set at liberty forthwith.

Votes: 7.—I agree with the order proposed in the petition by the learned Magistrate.

The facts which have given rise to this petition have been narrated by him and I think it is unnecessary for me to repeat them. A petition which was made by the Prison Government Advocate for the Prisoner was that this prisoner was not presented to this Court on the 17th October 1953 though the record order of detention had been passed on the 23rd May 1953. It is contended by the Prisoner that the petition having been made after the relevant Board constituted under the Prisons Act 1949 had forwarded its opinion to the

State Government, the detention of the prisoner is justified. The argument in short is that the detention of the prisoner is not in all events legal and that the Court cannot or should not therefore grant him a writ of habeas corpus.

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Article 21 of the Constitution guarantees life and personal liberty according to procedure established by law. Article 22 seeks to provide protection against arrest and detention in certain cases. In effect, what Article 22(4) does is to lay down that it shall not be open to the Legislature to pass any law authorizing preventive detention of a person for a longer period than three months unless an Advisory Board consisting of persons who are or have been or are qualified to be High Court Judges has reported before the expiration of the said period that there is no in the least sufficient cause for such detention. There is a further proviso that nothing is that sub-dense shall validate the detention of any person beyond the maximum period prescribed in any law made by Parliament under sub-clause (3) of clause (1). The Advisory Board has been constituted as a safeguard against a possible misuse of the power of preventive detention. The Advisory Board is not a judicial body: it does not follow strict judicial procedure: it is in fact an advisory body of a body charged with the responsibility of advising the executive government in regard to cases of preventive detention when it is recorded that such person is liable for more than three months. I cannot therefore accept the contention that we have any concern with the proceedings of the Advisory Board. The fact that the Constitution has provided an Advisory Board for advising on cases of preventive detention does not mean that the right of the Court to grant a writ of habeas corpus is taken away: the

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actual arrest or the opinion of the Court was alleged to improper has been taken away.

I agree with the view which has been expressed by *Justice G. J.* in the case of *Shaner* (supra). The State (i) does not say that an applicant's case has been considered by the relevant Board and (ii) does not make any reference to the order that we are just in the circumstances of this case.

The question which has to be considered is whether all the grounds supplied to the prisoner are of a nature sufficient to enable him to make a proper representation. The view which has been taken by their Lordships of the *Magnum Case* in *Ross* (supra) does not say that it is that necessary document form, a series of reasons of personal liberty, the duty of the court is to make sure that such things adequately in the circumstances enable, being in, manner, that one or more referred. The learned *Chief Justice* points out that the prisoner has a right under Article 12 (2) to be furnished with particulars of the grounds of his detention sufficient to enable him to make a representation which, on being considered, may give relief to him. The learned *Chief Justice* is in authority that this constitutional requirement must be complied with so as to each of the grounds communicated to the person detained. It is not of course to a claim of privilege under clause (2) of Article 12.

In *J. V. Brown* who appears for the prisoner has raised our attention to the grounds furnished to the prisoner and has contended that three of these are of a most unconvincing nature namely grounds nos. 8, 9 and 12. He ground no. 8 is it stated that the prisoner had been planning escapes with some 10

to those whom he got the bones of the millionaires. Means, Ransdahl, Christensen found the hanging them in basements and cellars. It will be seen that neither the time nor the place nor the names of the persons with whom he was planning have been disclosed.

In ground no. 7 it is alleged against the petitioner that he had been deserting the labour class which had not joined hands with him to leave the mills and join with him. A specific instance has also been mentioned in the second part of the ground. For joining with the labour class or of the mills, there being given in the ground. I say so that I should not have been deposed to look upon either of the grounds nos. 6 and 7 as that had it not been for ground no. 12 I shall therefore come to ground no. 12.

In this regard it is said that the petitioner had sponsored and organized two illegal strikes in which branches involving private and public drivers were squarred. Further the time and the place of these strikes has been mentioned in this regard, whereas these strikes were organized in April or somewhere else or not at all clear from it. It cannot be said from reading it what the period when these strikes were organized was. Though these strikes are described as illegal the manner in connection with which they were organized is not indicated. I am therefore driven to the conclusion that the grounds are vague, barren. As Paragraph 5(b) of [1] points out the fact that the petitioners would suffer no hardship or prejudice by reason of sufficient particulars are being furnished is here is considered.

The question however is not as he puts it whether the policeman will in fact be properly clothed, offered in the manner of securing his release

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by his representation but whether his constitutional safeguard has been infringed.

This is a case in which possibly good grounds for detention have been stirred up with vague technical and legal grounds. Having regard to the fact that the case which the Supreme Court has taken is that the prisoner's detention cannot be held to be in violation with the procedure established by law within the meaning of Article 21 unless the constitutional requirement with respect to each of the grounds enumerated in the person detained subject to a claim of a privilege under clause (b) of Article 22 is satisfied, there is no alternative before us but to direct release of the prisoner.

The prisoner must therefore succeed and I agree with the order of my brother Members that the prisoner be released forthwith.

In your Court.—The petition is allowed with costs. The prisoner is entitled to be released and we direct that he be set at liberty forthwith.

*Petition allowed*

## CIVIL MISCELLANEOUS

*Between Mr Justice Das and Mr Justice Bhagwati*

**2811 KISHORE AND ANOTHER (Applicants)**

**V**

**THE RENT AND EVICTION OFFICER  
KANPUR AND ANOTHER (Respondent Parties)**

*1961  
AIR 1961 2811*

**Order Prohibiting Unlawful Control of Rent and Eviction**  
**Art. 140 (1) (b) Supreme Court—Does a person, as a possessor of**  
**an accommodation, as to his—(i) exercise its control of**  
**that person**

Does a person, as a possessor of the accommodation, by virtue does not amount to a tenant's vesting the person of the accommodation and thus not give any rights to the Rent Control and Eviction Officer in relation with persons of the accommodation to evict the person.

A 75% of the Control of Rent and Eviction Act does not give any rights to an aggrieved person or aggrieved the State Government to take an order placed by the Rent Control and Eviction Officer.

*Civil Miscellaneous no 2811 of 1961*

The facts appear in the judgment.

*In K. Puri for the applicants.*

The Standing Counsel (Public) Ministry for the respondent.

The judgment of the Court was delivered by—

**Order 1.**—This is an application under Article 226 of the Constitution of India praying that a writ, order or direction in the nature of certiorari be issued to the respondent no. 1 (that is the Rent Control and Eviction Officer and Magistrate Kanpur) and the order of allotment dated the 1st of March 1961 passed by respondent no. 1 in favour of aggrieved parties nos. 2 and 3 namely the Assagunge Children.

Kangas through the secretary (Mrs. Fred Aida) to the chairman Kangas and Mrs. Barbara Franklin. His original testimony, however, Kangas has quashed. The facts relating to this application are:

The applicants are the landlords of certain buildings in a compound with one municipal number 171/1 situated on the Mui Keng of the various built up in one land and was before us one Sir Louis Macdonald Melrose, one of Sir Angus Fraser Melrose several years ago Sir Louis Macdonald Melrose whose father Sir Angus Fraser Melrose carried on a firm was in the name of S Yuen in that business. Of the establishment was in occupation of that premises on the 1st of March 1952 when according to the allegations the officers filed in support of this application appointed as a member the Rent Council and Eviction Officer and Magistrate Kangas passed the eviction order under section 7 of the United Provinces (Temporary) Council of Rent and Eviction (Amendment) Act (Act XLIV of 1948) ordering the applicants to let out the portion premises occupied by S Yuen to the Applicant Chan Yuen Kangas. The Landlord applicants received this order on the 11th of March 1952.

On 16th March 1952 according to the admitted case of the parties a letter addressed to Mui Chong instead of being addressed to Mui Yuen, one of the proprietors of the firm Mui, Sir Robert Wood Mui Chong (also wrongfully described as Mui Yuen) Sir Robert Wood Mui Chong was received from the Rent Council and Eviction Officer asking Mui Yuen to see the Additional District Magistrate (CM) Kangas on 4 p.m. that day in connection with the application in paragraph no. 17/15 previously accepted by Sir S Yuen. Mui Yuen was not at Kangas on that day and we could not comply with the





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unwilling to consult them before this point, and I, for my part, in return.

As far as the second ground is concerned, it was maintained in the counter-affidavit that it was disputed that there are several houses in the compound of premises no. 12, 4 and that the accommodation in occupation of the applicants is not consistent with the accommodation now in use. The various residences in the compound are separate independent units. The stated objection therefore has no force.

With respect to the first contention it was contended in the counter-affidavit filed on the 17th of April 1941 by the Rent Council and Eviction Officer himself that Mr Douglas Fraser Matthews had allowed one Sir B. D. Adams to occupy the premises in dispute with out any legal authority and that the lease dated the 26th of March 1941 was issued to Sir Doug Fraser and Mr MacL. Harris requesting them to contact the Additional District Magistrate (City) for the purpose of deciding the terms of tenancy after the allotment had been made. There was nothing in the lease to indicate this and it does not appear why the Additional District Magistrate (City) was to decide the terms of tenancy when the allotment was made by the Rent Council and Eviction Officer who would be the best person to decide the terms of tenancy if this matter was at all to be decided by the Rent Council and Eviction Officer. Ordinarily we think that this should have been the matter for decision between the landlords and the prospective tenant. There is nothing on the record to show, and it does not appear probable that the Additional District Magistrate (City) was authorized by the District Magistrate of Kanpur or perhaps any of the functions of the District Magistrate under the Rent Council and Eviction Act.

It was further mentioned in the counter affidavit that the allotment order dated the 10th of March 1933 was served on the landlords just after the date of the allotment but they evaded its receipt and it was finally served on them on the 11th of March 1933. This statement is self-contradictory and meaningless. If the allotment order had been served on the landlords on the 10th of March 1933 there was no question of its being finally served on the 11th of March. If there was any question of the landlords giving an receipt in token of having received the order, no such receipt seems to have been given by the landlords on the 11th of March 1933 as none has been produced in court. We have not been referred to any paper in support of the statement in the counter affidavit that the allotment order was served on the landlords on the 10th of March. However, the actual date of the service of the allotment order is not very material for purposes of this case.

It was alleged that the witness secured possession on the 5th of March 1965 and that it was false that the original intent was in contemplation of the accommodation in 1961.

It was also stated that the allotment order was made on the 4th of March 1935. It was alleged that it was made on the 5th of March, 1943. Two explanations however, has been given in that answer sufficient to show the allotment order (Answer 12) is the application which has been filed by the applicants before the date 4th March 1935. No allegation is made that this is not the order turned on him, or that any tampering has been done with the date on it or on any other portion of the allotment order.

It was also ascertained in this course of discovery that a notice was issued to the landlords on the 2nd of March 1935, informing them to appear before the Rent Control and Eviction Officer on the 24th of March, 1935, at

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the signatures of us against the allotment of premises no 17,3 and that the landlords did not receive the notice it was served by affidavit. Two documents were filed along with the affidavits in support of the allegations made therein.

A supplementary affidavit was filed by the applicants on the 23rd of April 1953. Its copy was delivered to the Housing Commissioner on the 21st of April 1953. On 23rd April 1953 a supplementary counter affidavit was sworn by the Rent Control and Eviction Officer. Its copy was handed over to learned counsel for the applicants on the 19th of April 1953 and it was filed in court on the 23rd of April 1953. In the supplementary counter affidavit, it was mentioned that the Executive Branch of the Women's Food Council was in search of a suitable accommodation for their Calabaria and applied to the authorities for a suitable place. No such application has been produced. We are informed that no written application was presented. The supplementary counter affidavit goes on to say that on the 16th of February 1953 the Senior Inspector (Housing) submitted a report to the deponents that the premises in dispute with the occupation of one room were an illegal and unauthorized occupation of one B. B. Khanna that only one room was in the occupation of Mr. Bhaque Prasad Mahabadi the tenant of the premises. This report revealed that B. B. Khanna had been occupying that premises for about a year, that the Rent Control and Eviction Officer visited the premises on the 20th of February 1953, and that the members of the Women's Food Council visited it on the 23rd of February 1953. They approved of the building as a suitable place for the Amangara Calabaria. On 24th February 1953 the Rent Control and Eviction Officer ordered issue of notice to the landlord applicants with regard to the allotment of the premises in dispute.

to the temporary Collector. A copy of the notice was filed with the affidavit. It shows that it was served to the End of March 1964. The enforcement is the back of the notice is to the effect that Nelson, Ed. Woodland refused to accept the notice and that the notice was therefore filed in the presence of two witnesses. It is wrong to see the report of the person who came to serve the notice. It does not show who actually refused to accept the notice and in whom it was returned. It is too much to suppose that the employees of the Office of the Rent Control and Eviction Office executed a return as such to serve the notice.

The supplementary counsel advised further that that prior to the 21st of March 1973, the Rens General and Justice Officer received a letter from Mr. Louis Minkovic dated the 28th of February 1973 to the effect that he was prepared to dispute with the exception of two more rooms. A copy of the letter has been filed. It has not appeared here previously. The letter is not in Mr. Minkovic's handwriting. It is signed by Mr. Louis Minkovic. The letter told me that Mr. Louis Minkovic had wanted the premises. It simply said that it was being confirmed that his change relations dealing with him had wanted the premises, the portions of which would be handed over to the possession of Mr. Stanislaw Adamowski. Stanislaw Adamowski was (Lion) Kasper. The letter further made a reference according to the verbal agreement and back to a room with two adjoining side rooms on the north hand side of the premises in question including the rear garage which had been constructed by him would remain in his possession for which reasonable rent would be paid to the Rens General and Justice Officer. The premises to dispute it appears had included the two adjoining side rooms and also a minor garage which was constructed by him, besides the two rooms on the block.



the District Magistrate and possession had also been served to the Additional District Magistrate (Dm.) We had at the time possession had been obtained by the Additional District Magistrate (Dm.) Kasper, who was ordering to do with the matter either as a Rate Control and Eviction Officer or as an officer bearing of the Assessor's Certificate. The report further said that the repairs could be undertaken at once and in the April month District Magistrate (Dm.) had himself seen the building in a bad condition it needed very extensive repairs and that, whilst section 7 D(1) of the Act of the landholder refused to finance the necessary of proper roofing, when making, etc. the owner could get it repaired on his own and the cost of repairs could be adjusted towards the rent. On the report of the Rate Control and Eviction Officer for Sanitation Additional District Magistrate (Dm.) Kasper ordered the Rate Control and Eviction Officer to take necessary action and let him know the result. On the 12th of March 1944 the Rate Control and Eviction Officer reported that action had already been taken. When the action was and whether it is not clear. If one of those two officers answer the Rate Control and Eviction Officer of the Additional District Magistrate (Dm.) Kasper had taken the action that would not be covered by the possession of section 7 D(1) of the L. P. (Temporary) Control of Rent and Eviction Act (Act no. III of 1942) which is:

7 D(1)—If the landholder fails to finance the cost necessary within the time fixed by the District Magistrate, he shall be responsible for the District Magistrate to direct that the owner may have such necessary repairs and the cost thereof may be deducted from the rent which is payable to the landholder.

If the action taken was simply to inform the prospective tenant that he was free or no undertake the

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11 reports that are made under these provisions.  
The following on the record in this case, which particular  
12 matters require reports were necessary in being that the mat-  
13 ters which had been in actual possession may be of an  
14 character and person B is known. It is in connection  
15 with these reports that the supplementary answers  
16 indicate matters that the respondents, Coleman had  
17 spent over \$2,000 in making necessary repairs. In the  
18 supplementary responses sufficient two questions deserve  
19 mention. One is with respect to the alleged receipt on or  
20 on the 2nd of March in the handwriting of Major the Iowa  
21 General and Division Officer on the 2nd of March and  
22 versus their objection to the affidavit. It is alleged  
23 that the 2nd and 3rd of March 1947 were held as an  
24 attempt of this. The other is that the copy of the affidavit  
25 must refer him with the supplementary affidavit  
26 which does not agree with the affidavit order is not  
27 on the applicant's own work except in the date but  
28 the work refers to the description of the work of  
29 of the machine. The affidavit order served on the  
30 applicant mentioned the specifications as U. S. (Temporary)  
31 the copy in the back of the copy filed with the  
32 supplementary answers which mentions the specifications  
33 as U. S. (Temporary and back matter)

The learned Branching Counsel has already taken up  
two grounds in submitting that the applicants could not  
get an order in this case. One is that the  
fact in submitting adequate remedy in view of the  
provisions of section 77 of the U. S. (Temporary)  
Control of Rent and Profits Act which reads as  
follows:

"If The Court Commission may call for the  
record of any case, granting or refusing to grant  
permission for the filing of a suit for revision order  
and then section 77 is requiring any action under  
to be let or not to be let to any person under section





[1948]

Copy  
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some verbal agreement between Sir Uma Shankar and Sir Swarnjit Singh Additional District Magistrate (City). As the learned Standing Counsel had put stress on the question of alternative remedy we asked him to file the three letters referred to in the letter of the 19th of February 1953. The first letter, dated the 24th of February, 1953 refers to some telephone conversations between Sir Uma Shankar and the Rent Control and Eviction Officer Sir M. Sachdev who informed him that he was making arrangements for providing suitable alternative accommodation for Sir B. D. Khanna and his wife and family members and hoped that they would be good enough to vacate the premises on 17/3 the Mill Bazaar as it was needed by Mrs. Manika who had already occupied the premises. According to the statement Sir B. D. Khanna was the person who had occupied the premises at rent without any authority and had been occupying it for a year. The Rent Control and Eviction Officer could have taken legal action against him instead of showing such tolerance for him and depend-  
ing on his goodness to get the premises vacated. The second letter dated the 26th February 1953 states that there had been no response from Sir Uma Shankar although Khanna was not very helpful. In this letter it was mentioned that the Rent Control and Eviction Officer was under no obligation to the illegal occupier though he was under obligation to the tenants of the premises. The third letter dated the 25th February 1954 shows that the Additional District Magistrate (City), Rampur, had informed the Rent Control and Eviction Officer that the premises would be vacated on the 1st March 1955. It refers to the claim on the part of the Rent Control and Eviction Officer to remove the landlord who manifestly was reported to be dead and dead but his representatives had not yet been found. Considering this information on the part of the local officer in connection with the

in light of the promises and an allotment, it can be said all claims mentioned above the applicants need not be allowed if they did not approach the State Government because they could have presented their claims before the War Government must have taken such measures under some regulations however, seeing that various rights have been lost are therefore, at the expense that the applicants are not deprived of getting their applications considered. In a writ application on review of the proceedings of section 17 of the L. P. (Temporary) Control of Rent and Eviction Act, 1947.

The second point raised by the opposing parties was that the order impugned was an order passed by the Rent Control and Eviction Officer within his jurisdiction to the parties to not fall fallen vacant. It was therefore submitted that the order was not to be interfered with as the purpose of the provisions under Article 20 of the Constitution.

Section 7 of the L. P. (Temporary) Control of Rent and Eviction Act (Act III of 1947) reads as follows:

7. (a) The District Magistrate may, by general or special order, require a landlord to give into notice the vacant accommodation of which he is the landlord is or has fallen vacant, and to let or not to let such accommodation to any person.

(b) In any case where in pursuance of an order of the District Magistrate passed under clause (a) above the vacant accommodation is required to be repaired, the tenant occupying such accommodation shall within seven days of his vacating the same give satisfaction thereof to the District Magistrate or such officer as the District Magistrate may appoint in this behalf.

Provided that in making the new allotment in the case of any accommodation constructed after the 1st July 1948 the District Magistrate shall offer it

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in the owner, if the owner was having no occupation of any other house owned by him at that material point or other comparable time to which the law applies, positively requires such accommodation for his own occupation.

*Explanation*—A house consumed, accordingly, was still to be vacant as soon as it is fit for occupation.

The vacancy of an accommodation referred to in this section means the vacancy of the entire accommodation in the instance of two persons and means only the vacancy, not being for the time being part of the accommodation which had been let out to him as a result of the termination of the contract of tenancy between him and the landlord. If a tenant occupies a portion of the accommodation as his dwelling and lets an other person occupy the other portion, would be the tenant's sub-tenant and cannot become the tenant of the landlord. So far as the landlord is concerned, the original tenant appeared to be his tenant still, his tenancy comes to an end in any of the recognized ways. If the vacancy of the accommodation is occupied by section 7 included the vacancy of a portion of the accommodation let to a tenant it may result in another situation. The landlord has no reason to know of the partial demise of the accommodation let out to the tenant. He cannot give up notice to the District Magistrate under clause (a) of sub-section (1) of section 2 of the Act. The original tenant continues to be his tenant and the landlord therefore cannot accept another person as when the Rent Control and Eviction Officer files the part of the accommodation, not being referred to the tenant, that he does not want to let the other portion of the accommodation let out so long. The new tenant cannot, therefore, be the tenant of the landlord and cannot be the sub-tenant of the original

control, in view of the allotment order, there being no contract of tenancy between him and the sub-tenant. The landlord was also lying himself within the purview of sections 8 and 11 of the U. P. (Temporary) Control of Rent and Eviction Act, 1947. We therefore, hold that the decree by a contract of a portion of the accommodation let to him does not amount to the tenant's occupying that portion of the accommodation and does not therefore give any right to the Rent Control and Eviction Officer to seize such portion of the accommodation to another person. It follows therefore that the Rent Control and Eviction Officer's order affecting the premises no. 27/3 with the exception of one back room on the occupation of S. V. Ram to the Annapurna Cafeteria was an order which he had no right to pass and therefore, this order should be set aside.

Learned counsel for the opposite parties further submitted that if the tenant could not evict the portion of the accommodation, the allotment to the premises rent, would be the sub-tenant and the applicants could therefore take legal action against the tenant for sub-letting in view of sections 3(3) (c) and section 3(4) of the Act. We have already indicated that the order of the Rent Control and Eviction Officer is not an order to the effect that the Annapurna Cafeteria would be a sub-tenant of the tenant. The order is directed against the landlords and in such respect to the Annapurna Cafeteria becoming the tenant of the accommodation in suit. Further, section 7(4) provides:

7(4) No tenant shall sublet any portion of the accommodation in his tenancy, except with the permission in writing of the landlord and of the District Magistrate previously obtained.

It follows that the Rent Control and Eviction Officer's order does not have been sufficient for the eviction of the sub-tenancy in favour of the Annapurna

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[illegible]

Witness: There should also have been the consent of the landlords as well. It would then appear that the Post General and Foreign Office's order of 11 January, if given after it is an order, causing the sub territory, would amount to confirming an order of the Home General and Eastern Office which he could not do as a private person.

In view of the above we quote the order of clearance passed by the Revenue Control and Excise Officer in favour of the Singapore Customs applicant prior to 2 on the 16<sup>th</sup> or 17<sup>th</sup> of March, 1953 with respect to premises no. 1773 the Mall Rangoon street etc. back some years back in the occupation of Sir S. Vaidya. A further order appears prior to 1 on whose behalf the firm was connected to pay duty on the application which are annexed at B-2(b).

We order that the show letters filed by the appellant's mailing counsel under case caption be returned to him.

## (FULL BENCH) CIVIL MISCELLANEOUS

*Before Mr. Justice Sirhan Suran, Mr. Justice Basil Bawa  
Present and Mr. Justice Kaul*

54/843 M.A. (1954/1955)

12

THE BOARD OF REVENUE U. P. vs. OTHERS  
(OPPOSITE PARTIES)

1954  
October 15  
1954  
September 28

*Code of Civil Procedure, 1908, Order XLV : 35—Judges  
given by a single Member of Board of Revenue—Judgment  
sent to another Member for consideration—Judgment, if any,  
is given without hearing parties or their counsel*

When a single Member of the Board of Revenue has given  
a judgment modifying or reversing the order or decree under  
consideration and sends it to another Member of the Board of  
Revenue the latter cannot give a judgment without giving  
the parties or their pleaders an opportunity of a hearing as  
required by Order XLV : 35 of the Code of Civil Procedure

*See Member v. Board of Revenue (?) overruled*

Civil Miscellaneous no. 3795 of 1951

The facts appear in the judgment.

*Harish Chandra Sharma* for the applicants

*Isiah Chandra* for the opposite parties

**BHAI BABA PRASAD, J.** —This is an application under  
Article 226 of the Constitution asking out of an appeal  
which has been decided by the Hon'ble Board of  
Revenue of Uttar Pradesh (hereinafter referred to as  
the Board). The relevant facts are that a suit under  
section 39 of the United Provinces Tenancy Act 1938  
(hereinafter referred to as the Act) was filed by the  
opposite party no. 2 against the applicant and opposite  
party no. 3 as 7 claiming that he was the sole tenant of

with  
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appeal in  
Section  
118  
regarding  
Part 2

the land in dispute. The applicant contended that he was a joint owner with opposite parties nos. 2 to 5. Opposite parties nos. 6 and 7 were the sameholders. The trial court dismissed the suit but on appeal the Additional Commissioner allowed the appeal and decreed that suit touching the opposite party nos. 2 alone was the intent of the land in dispute. The applicant filed "second Appeal no. 594 of 1929-30 before the Board and it came up for hearing on the 17th March 1931 before Mr. T. N. Srivastava one of the Judicial Members of the Board. After hearing arguments, he delivered a judgment on the same date by which he allowed the appeal and set aside the decree of the learned Additional Commissioner reversing the decree of the trial court. As required by rule 174 of the Revenue Court Manual the judgment was sent for concurrence to Mr. R. N. Singh, another Judicial Member of the Board who without leaving the paper wrote his judgment on the 5th April 1931, disapproving what Mr. T. N. Srivastava had proposed, the dismissal of the appeal. The judgments of both the Hon'ble Members were then sent to a third Judicial Member viz. Mr. A. Raul who by his judgment dated the 15th April 1931 concurred with the judgment of Mr. T. N. Srivastava. These three judgments were then sent to Mr. J. G. N. Shukla the fourth Judicial Member who by his judgment dated the 23rd April 1931 disagreed with the judgment of Mr. T. N. Srivastava and agreed with Mr. R. N. Singh. It appears that there is a meeting of the Members on the 16th April 1931 and it was agreed that the Additional Commissioner's judgment should be upheld. The appeal was accordingly dismissed.

The committee on behalf of the applicant is "not taking regard to the provisions of Order III, rule 52 of the Code of Civil Procedure (hereinafter referred to as the Code) the judgments of Mr. R. N. Singh,



A Bench and J. O. N. Sheikh are no judgments, because they were delivered without giving an opportunity to the parties to be heard. This point came up before a Bench of this Court in *Ram Mander v. Board of Revenue U. P.* (1) and the contention that the other Member should have heard the parties was rejected. In view of this decision the Division Bench has referred the following point for decision to a Full Bench:

THE  
HON'BLE  
JUDGES  
OF THE  
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OF  
APPEALS  
IN  
REVENUE  
MATTERS  
IN  
U. P.

When a single Member of the Hon'ble Board of Revenue has given a judgment *exhibiting* or *reversing* the *error* under consideration and sends it to another Member of the Board of Revenue, and the latter gives a judgment without hearing the parties or their pleaders as required by rule 50 of Order XLII of the Code of Civil Procedure—

I am conscious of the fact that the procedure which the Hon'ble Members of the Board of Revenue have followed has been long in vogue in the Board. I am reluctant to disturb such a long standing practice unless the law compels me to do so. The point involved is essentially one of procedure. I have arrived at the conclusion that such a procedure is not warranted by the law.

Section 243 of the United Provinces Tenancy Act, 1929, which applied at the time when the appeal was heard by the Board provides as follows:

243. (1) The provisions of the Code of Civil Procedure except—

- (a) provisions inconsistent with anything in this Act, so far as the inconsistency extends
- (b) provisions applicable only to special suits or proceedings outside the scope of this Act, and

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(1) the provisions contained in List I of the Second Schedule

shall apply to all suits and other proceedings under this Act, subject to the modifications contained in List II of the Second Schedule.

(2) The rules mentioned in the Second Schedule of this Act shall be interpreted, in the case of Appeals, as referring to rules contained in the First Schedule in the Code of Civil Procedure, 1908, as altered or added to by the High Courts of Judicature at Allahabad under section 123 of the Code of Civil Procedure, 1908, and in the case of Appeals as referring to rules contained in the First Schedule to this Code as altered or added to by the Chief Court of Oudh under section 122 of that Code.

From List I of the Second Schedule it will be seen that no rule of Order XLII or XLIII of the Code of Civil Procedure has been exempted as an application to suits under this Act. Order XLII deals with appeals from original decrees, and Order XLIII with appeals from appellate decrees. Order XLIII contains only one rule which provides as follows:

The rules of Order XLII and Order XLII A shall apply so far as can be to appeals from appellate decrees.

The detailed provisions to be followed in second appeals we must therefore turn to Order XLII.

New List II of the Second Schedule of the Act, repeats the modifications subject to which certain provisions of the Code apply to cases under the Act. Section 54 of the Code provides for decrees where appeal is heard by two or more judges. Serial no. 6 of List II contains the following modification to section 54:

Nothing in this section shall require two members of the Bench to sit together in the exercise of appellate or revisional jurisdiction under this Act.

Section 14 of the Act contains the following words:  
 Section 14 of the Act contains the following words:

No judgment of the Board shall be dated or signed or pronounced in open court.

Rule 39 of Order XLII of the Code provides as follows:

The appellate court, after hearing the parties in their pleadings and referring to any part of the proceedings whether on appeal or in the court from whose decree the appeal is preferred, to which reference may be considered necessary, shall give reasons for its judgment in open court either at once or on some future day of which notice shall be given to the parties in their pleadings.

The important point to note in the above rule is that it requires the parties to be heard before the appellate court gives the judgment. This provision has not been transposed nor modified in its application to the appeal under the Act.

I now refer also to rule 170 contained in the Revenue Court Manual. It provides:

When the Board has distributed its appellate business among the Members, the order of a single Member as the order of the Board, but as far as an order coming under the consideration of the Board, an appeal shall be modified or reversed without the concurrent judgment of two Members of the Board.

This exhausts all the relevant provisions of the law bearing upon the point under consideration, which have been placed before us. The provision is that according to section 14 of the Code as applied after modification to appeals under the Act, it is not necessary for two Members of the Board to sit together to hear an appeal.

170  
 Section 14  
 The  
 Revenue  
 Court  
 Manual  
 170  
 Section 14

1. A single Member may hear an appeal. If he declines to appeal then his judgment according to rule 170 of the Revenue Court Manual will be the judgment of the Board. But if he proposes to reverse or modify a decree then there shall be the unanimous judgment of members Members of the Board. Under rule 50 of Order XL of the Code there can be no judgment by an appellate court without hearing the parties. The other Member to whom the appeal is referred is a Member of the appellate court. All Members who participate in the decision of an appeal whether agreeing with or dissenting from the judgment of the Member who originally heard the appeal are according to rule 25 of Order XL of the Code bound to give an opportunity of hearing to the parties. This rule is based upon the elementary principle of judicial procedure that no judgment should be given by a court or a tribunal without giving an opportunity of hearing to the parties. The hearing of the parties goes a great way in the distribution and clearing out of the parties involved in a case. It gives satisfaction to the parties. Justice should not only be done but it should appear to be done. As the law is at present a member of the Board may not hear and decide an appeal or revision singly. If he proposes to dismiss a law judgment will be the judgment of the Board. But if he proposes to reverse or modify a decree or an order he must refer it to another member and the latter cannot give his judgment without giving an opportunity of hearing to the parties. The two members may meet together to decide the appeal or revision but each of them must give the parties an opportunity of hearing separately though it may be better according to the judgment in *Pratt v. Minister of Revenue U.P.* (1) the effect of Order XL rule 25 of the Code of Civil Procedure was



THE CHIEF JUSTICE: I would answer the question referred by the Division Bench as follows:

THE  
CHIEF JUSTICE  
OF THE  
SUPREME COURT

When a single Member of the Bench of Revision has given a judgment modifying or reversing the order or decree under consideration and sends it to another Member of the Bench of Revision, the latter cannot give a judgment without giving the parties or their pleaders an opportunity of a hearing as required by rule 39 of Order XL of the Code of Civil Procedure.

HALL, J. —I agree.

CHIEF JUSTICE: —I agree and have nothing to add.  
By MR. COUNSELLOR: —The answer to the question referred by the Division Bench is as follows:

When a single Member of the Bench of Revision has given a judgment modifying or reversing the order or decree under consideration and sends it to another Member of the Bench of Revision, the latter cannot give a judgment without giving the parties or their pleaders an opportunity of a hearing as required by rule 39 of Order XL of the Code of Civil Procedure.

[The receipt of the opinion of the Full Bench in the case was had before the original Bench for final orders.]

HALL, CHIEF JUSTICE: —The facts of the case are given in the order of reference of the Bench of which one of us was a member. The following question was referred to a Full Bench of the Court for decision:

Q.—When a single Member of the Hon'ble Bench of Revision has given a judgment modifying or reversing the decree under consideration and sends it to another Member of the Bench of Revision, can the latter give a judgment without hearing the parties or their pleaders as required by rule 39 of Order XL of the Code of Civil Procedure?

The Full Bench has given the following answer to the three questions referred to it for decision:

When a single Member of the Board of Revenue has given a judgment involving or reversing the order or decree under consideration and such an or another Member of the Board of Revenue, the latter cannot give a judgment without giving the person or persons plaintiffs an opportunity of a hearing as required by rule 10 of Order XLV of the Code of Civil Procedure.

The Board of Revenue delivered the judgment in question on the 28th of April 1911. This judgment was delivered after a consultation had taken place between all the four Members of the Board, three of whom had not heard the appeal in all. In view of the decision of the Full Bench the order passed by the Board of Revenue was without jurisdiction and it is therefore quashed.

*Application allowed.*

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Treas.  
Board of  
Revenue  
F. P.  
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JAMES  
MUIR  
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## CONCLUSIONS

Before the Honorable E. Mark Clark Justice and  
Mr. Justice Abner

MANUSCRIPT FOR PUBLICATION IN JOURNAL OF THE  
 AMERICAN MEDICAL ASSOCIATION  
 PUBLISHED BY THE AMERICAN MEDICAL ASSOCIATION  
 535 N. Dearborn St., Chicago, Ill. 60610





IN THE  
MADRAS  
HIGH COURT  
FOR THE  
MADRAS DISTRICT  
IN  
SUIT NO. 1  
OF 1956  
IN THE  
MADRAS DISTRICT  
COURT

quoted below in para 3 of this reference the assessee's chargeable accounting period under section 5(1) (b) of the I. P. T. Act read with rule 3 Schedule I of the I. P. T. Act should be taken to be from 24th November 1941 to 31st October 1942 (a) should be taken to be from 1st of November 1941 to 31st March 1942 for the purpose of the I. P. T. assessment for the year 1941-42 and from April 1942 to 31st March 1943 for the purpose of I. P. T. assessment for the year 1942-43.

The assessee is an incorporated firm which takes building contracts from the military department. The assessee started its business on the 24th of November 1941 and between 24th November 1941 and 23rd February 1942 it entered into contracts from the military department. In the building agreement it was provided that the assessee would have to look after the maintenance of the building for a period of one year after the completion of the building. The building work was completed on 24th November 1942. The assessee claimed that up to the 31st of October 1942 the assessee had spent a sum of Rs 25,829 in the repair and maintenance of the building. It is the case of the assessee that the military department had withheld a portion of the payments due under the bills submitted to the assessee and a sum of Rs 46,560-12 was paid to it during the accounting year 1942-43 and a further sum of Rs 46,575 was paid in the next accounting year 1943-44. The questions referred to us relate to the period for which the assessee should be compensated for the purpose of interest. The first question has reference to the compensation under the Indian Income Tax Act and the second question refers to the compensation under the Excess Profits Tax Act. We shall take up each question separately with reference to the facts as given in the statement of the case.

The first question is to the effect: whether, for the purpose of assessment, the financial year from 1st April 1942 to 31st March, 1943 should be the account period, or the accounting period should be from 27th November, 1941 to 31st October, 1942.

The determination of the persons who are subject to payment of the income Tax Act defining persons who may be covered. It is to the following effect:

Q11.—For each year, compute the respect of any legislative branch of income, profits, and expenses.

(f) the twelve months ending on the first day of March next preceding the year in which the assessment is to be made or if the accounts of the assessor have been made up to a date within the said twelve months in respect of a year ending on any date other than the first day of March then at the option of the assessor the year ending on the day to which his accounts have so been made up.

Provided that where an amount has been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression "previous year" as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit.

(c) where a business, profession or vocation has been newly set up in the financial year preceding the year for which assessment is to be made: the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following any of the accounts of the taxpayer are made up.



that the 31st day of March, the previous year must be the period between the date of the new business and the first day of March next preceding the year of assessment. In this case this would be the period between the 31st of November 1941 and the 31st of March 1942 for the assessment year 1942-43. This point, as we have said earlier, has however not been referred to as but we have expressed our views on this question only because it has a material bearing on the question actually referred to us which relates to the assessment year 1941-42.

The previous year, for the assessment year 1943-44, must be the financial year ending on the 31st day of March 1943 for two reasons.

The first reason is that, for the determination of the previous year for the assessment year 1942-43, the provisions applicable to the first part of section 2(11) (c) of the Indian Income Tax Act. The second part of this clause would have been applicable only if the accounts had actually been made up to some date earlier than the 31st day of March 1942 when the assessee might have had the option of treating the twelve months ending on that date as its previous year for the assessment year 1942-43. The facts on the other hand show that the assessee did not make up its accounts until the 31st of October 1942 a date which falls during the assessment year 1942-43 and not during the twelve months preceding that assessment year. Since the second part of section 2(11) (c) of the Indian Income Tax Act is not applicable the first part would apply and under it the previous year for the assessment year 1942-43 must be the twelve months ending on the 31st day of March 1942.

The second reason is that, under the provisions of section 2(11) (d) an assessee is not entitled to exercise his option granted under that section so as to vary the meaning of the expression "previous year" if the assessee has made

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of the  
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been assessed on the basis of a particular account of income profits and gains on the basis of some period in the previous year. In this case we have said above that for the assessment year 1942-43 the Income Tax Officer has already been assessed on the basis of the previous year ending on the 31st day of March 1942 and consequently, he cannot say, his previous year except with the consent of the Income Tax Officer and upon such conditions as the Income Tax Officer may think fit. In this case no variation was sought with the consent of the Income Tax Officer and consequently the previous year for the assessment year 1943-44 must be the twelve months ending on the 31st day of March 1943. This is the answer to the first question.

As regards the second question, there is even less to be said. Under section 3(1) of the Income Tax Act, the "accounting period" in relation to any business means

(a) where the accounts of the business are made up for successive periods of twelve months, each of such periods;

(b) in any other case, such period as the Income Tax Officer may determine.

The first will come under the second sub-head, i.e. where the accounts of the business have not been made up for successive periods of twelve months. The provision in this subsection is to the following effect:

Provided that no determining any accounting period under sub-clause (b), the Income Tax Officer shall have regard to the period, if any, which it or has been determined in the previous year for the business for the purposes of the Indian Income Tax Act, 1922.

In the case before us, the Income Tax Officer has fixed the same accounting period as the Income Tax Officer. Though the question was not directly raised

the leased contract for the ~~average~~ <sup>average</sup> ~~total~~ <sup>total</sup> to argue that the profits should not have been computed till the work under the contract was completed in the year 1944 and the one year period during which the machine was to maintain the building had expired. Learned counsel has gone further and has urged before us that not only till the work under the contract had been completed but till the last payments had been made there should be no computation of profits. Rule 3 of Schedule I of the Excess Profits Tax Act is a complete answer to this contention. Rule 3 of Schedule I of the Excess Profits Tax Act reads as follows:

4. Where the performance of a contract extends beyond the accounting period above still (unless the Excess Profits Tax Officer, owing to any special circumstances otherwise directed) be assessed based on the accounting period such proportion of the excess profits or loss which has resulted as which it is assumed will result from the complete performance of the contract, as is payable or is payable in the accounting period having regard to the extent to which the contract was performed therein.

Provided that, when any such contract has been completed and the profits have been finally ascertained, if the aggregate of the amounts ascribed to previous accounting periods exceeds the profits actually ascertained from the complete performance of the contract, an adjustment shall be made to reduce the amounts so ascribed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

Our answer to the second question, therefore, is that the chargeable accounting period for the assessment will

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1942-43 was from the 1st of November 1941 to the 31st of March 1942 and for the assessment year 1943-44 it was from the 1st of April 1942 to the 31st of March 1943.

The assessee must pay the cost which he is liable to pay.

1942-43

Questions answered

## APPELLATE CRIMINAL

*By Mr. Justice B. M. Chatterjee, Chief Justice and  
Mr. Justice Chatterjee*

### STATE

1

### SALUTE LAND

*State of Madras, Revenue of Agriculture Act, 1942, section 10 (1) as to the liability of purchase of a certain land under the Act, whether, an estate of land.*

An estate of purchase is, under a description of article, and is not a revenue charge, under the meaning of section 10 (1) of the Revenue of Agriculture Act. Also, it is, the same as, under the Act, is an estate of land under section 10 of the Act.

Criminal Appeal no. 113 of 1961 (continued with Criminal Appeal nos. 144 of 1961 (1st of 1961) and 150 of 1961) from an order of R. D. Pandey, Additional Magistrate, First Class, Baramulla, dated the 19th March 1961.

The facts appear in the judgment.



The *Collector* (Advocate) (P. N. Choudhary) for the State

1952  
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*vs. D. Gupta for the respondent*

The judgment of the Court was delivered by—

MAJ. C. J. —There are four Government appeals against the orders of acquittal passed in four cases for prosecutions under the United Provinces Prevention of Adulteration Act Act no. VI of 1932.

It would be convenient to take up the three cases Criminal Appeal no. 145 of 1951 Criminal Appeal no. 146 of 1951 and Criminal Appeal no. 148 of 1951 together and Criminal Appeal no. 428 of 1953 separately. In Criminal Appeal no. 145 of 1951 and Criminal Appeal no. 146 of 1951 the accused Bahadur and Anwar Nahi respectively were charged with having sold adulterated Lahu oil while in Criminal Appeal no. 148 of 1951 Anwar Nahi was prosecuted for having sold adulterated Alu oil.

The accused are wholesale dealers. The District Inspector suspects that the Lahu and Alu oils sold by the accused were adulterated and let themselves were and purchased some quantity of oils. These he sent to the Public Analyst U. P. Government for analysis and report. The Analyst found that the samples were not all adulterated and ~~thereupon~~ the accused were prosecuted before Mr. R. D. Fende Additional Magistrate for ~~the same~~ ~~from~~ ~~Tal~~. The learned Magistrate took off some remarks and acquitted the accused on the ground that the accused were prosecuted by section 6 of the Act. It is against these orders of acquittal passed by the learned Magistrate that these appeals have been filed. It has been urged on behalf of the State that the view taken by the learned Magistrate that the accused were entitled to rely on section 6 was erroneous.

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Section 4 of the Act provides that—

Whoever sells to the purchaser of the purchaser any article of food or any drug which is not of the same substance or quality of the article or drug demanded by such purchaser or sells or offers or exposes for sale or manufactures for sale any article of food or any drug which is not of the same substance or quality which it purports to be shall be punished for the first offense with fine which may extend to one hundred dollars and for a second or any subsequent offense with fine which may extend to one hundred dollars or imprisonment of either description not exceeding three months or both.

It is not necessary to quote the proviso. The case for the prosecution was that the accused sold or offered or exposed for sale an article of food which was not of the same substance or quality which it purports to be.

The fact that the Ails oil and the Laid oil were adulterated has been found by the Public Analyst on six samples of the samples sent to him and the learned counsel for the accused have not challenged the Analyst's report. It has however been urged on behalf of the accused that the accused had offered for sale only such articles as had been supplied by them from the mills that were manufacturing it, and showing that the articles were adulterated. In other words the plea is a plea of non est of non est, or that the articles were sold as used from by the accused believing them to be adulterated articles. It is, however, open to the Legislature to make that sale of adulterated food-drugs not to be punishable. Section 5 of the Prevention of Adulteration Act provides that

In any prosecution under section 4 it shall be a defense to allege that the vendor was ignorant

of the nature, substance or quality, of the article or drug sold by him, or that the purchaser having bought only for analysis was not prejudiced by the sale.

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There is, however, a proviso to the proviso, and if the vendor can come under the proviso he must be held to be not guilty. The proviso makes it clear that the vendor must have taken from the person who supplied him with the article a written warranty to the effect that the articles sold were of the nature, substance or quality which they purported to be; that the vendor had no reason to believe at the time when the articles were sold that the articles were adulterated; and lastly that the adulteration was not done when the articles were in his possession. In the case before us the accused were able to prove the second and the third requirements; that is, that they sold as good fish what they had been supplied by the mills and had no reason to think that the Ahi oil or Lahu oil were adulterated. The learned Magistrate also believed their statements that they sold the Ahi oil and Lahu oil on the same scale as which the accused had purchased them. It was admitted by the Factory Inspector that he purchased the samples from sealed tins.

The only question was whether the accused had also obtained a written warranty to the effect that the Ahi oil and the Lahu oil were not adulterated. The learned Magistrate thought that the reasons of purchase which were in writing and were on the record were in answer to the first requirement. The case was decided that the nature of purchase in which the mills selling the articles to the accused had mentioned what they were selling was the type of written warranty which the Legislature had contemplated under proviso (b) to section 2. It is in public interest that the vendors of articles of food should sell to the public unadulterated

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Incidentally, and it is with this object that this Act was passed. Generally it is not the manufacturer who directly comes into the market as will his articles be to the consumer, but there are many middle men who come in. It would be easy in such cases for the shopkeepers to evade responsibility by pleading that they did not know that the article of food purchased by them for sale was adulterated. It is on other accounts that the section has provided that ignorance of the fact of adulteration will be no excuse and the vendor will only be protected if apart from other things he had obtained a written warranty as regards quality from the person from whom he had purchased the article for sale. An invoice is merely a description of the article sold and cannot be said to be a warranty given in accordance with the provisions of paragraph (a) of section 2.

Learned counsel has urged that *Alia oil* is not edible and as regards *Laka oil* his argument is that there is no evidence to show that it is edible. Learned counsel has however submitted that *Laka* is a type of black gram seed which is more pungent than the ordinary mustard seed and is used by people who prefer more pungent oil than ordinary mustard oil. We think we can take judicial notice of the fact that mustard oil is edible at least in this State. As regards *Alia oil* learned counsel said that *Alia oil* is the same thing as *linseed oil*. The question is whether *linseed oil* is an article of food under section 1 of the Act. Food has been defined in section 2 as including

"every article used for food or drink, by man or other than drugs or virus and all material used or admitted in the composition or preparation of such article and shall also include flavoring matters and condiments."

The definition therefore is very general and very wide, and for food as dried, in case would come under that action. The matter came up before a learned single judge of this Court in *Ex parte East India v. State* (1) and the learned judge held that honeyed oil was an article of food. We say no reason is shown from that conclusion.

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In our view, therefore, the learned Magistrate erred in relying on the proviso to section 4 and accepting the accused.

As regards the fourth case (District Appeal no. 418 of 1951) in which *Paras Mand* was accepted a sample of vegetable ghee. *Beveria Trade Mark*, was taken from him by the Survey Inspector. The sample was sent to the Public Analyst who reported that the sample was adulterated and seemed oil as the sample was less than the required minimum of 5 per cent. As regards adulteration, no questions were asked in the report, but he was asked whether it was not a fact that the *Beveria Trade Mark*, vegetable ghee, the sample of which was sent to the Public Analyst, contained less than 5 per cent. of sesame oil. The accused admitted that the sample was taken from him sealed tin and pleaded that he was innocent. We take it that the *Beveria Trade Mark* is a registered trade mark under the *Patent Designs Act*. Learned counsel for the State has admitted that there is no rule or regulation made by the State Government under section 14 of the *Prevention of Adulteration Act* requiring that all vegetable ghee should contain at least 5 per cent. of sesame oil. Section 14 of the Act therefore does not apply to the case, and unless it can be shown that there is a rule or regulation under this Act which requires that the vegetable ghee should contain sesame oil in a certain proportion, we fail to see how the accused can be convicted.

under section 4 of the Act. We are not entitled to the copyright form. Good has been made and having all done.

The result, therefore, is that *Cum gratia* Appeals nos 145-146 and 148 of 1931 are allowed. The accused are sentenced under section 4 of the Criminal Provisions (The Customs of Afghanistan Act and returned to pay a fine of Rs 10 each.

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**Figure 1**

**CONTINUAL MISCELLANEOUS**

Before Mr Justice Evers and Mr Justice Atkinson

## STATE OF UTTAR PRADESH



2000 2001 2002 2003 2004

**Contents of Courts Act, 1980, s. 2.—**Complaint filed by a complainant—can be filed by a Magistrate. First class—district magistrate—can remove Magistrate or Magistrate made. Is complaint in the House. Member of House—Letter, of course, is available.

On a complaint filed by B. J. Maguire, one of the first class and the two agents in question under a 1961 Indiana Food Code and explained that "I did not file any charges but wrote a letter to the Public Manager of Indianapolis as the form of a petition or representation in which serious allegations of malpractice and perjury were made against the Magistrate. That letter was ultimately forwarded to the District Attorney who advised that to substantiate his allegations the said attorney would refer it to the Legal Department for further review for necessary criminal proceedings against it."

1972 that the loss of independence nearly by 1 on the Fraser-Holmes of India did not represent an loss of independence.



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been this in 1945, the case against the accused and by his order dated the 2nd August 1949 acquiesced the accused on the ground that they were prosecuted 1-15-1949 on 7 sections 495 of the Indian Penal Code. The opposite party took no further action by way of revenue to this case matter was concerned. He however, wrote a letter to the Prime Minister of India. It is in the form of a petition or representation and is dated the 18th January 1958. In the course of this letter the opposite party made serious allegations of corruption and perjury against the Magistrate.

The representation sent to the Prime Minister was forwarded by the Prime Minister's Private Secretary to the Chief Secretary to the Government of Uttar Pradesh Lucknow for disposal. The Chief Secretary narrates in that letter to the President Office of Government, L. P. the necessary papers and final disposal. On an enquiry, in a letter dated the 15th March 1958 to the President Office the opposite party reiterated the allegations of dishonesty and perjury that he had made against the Magistrate. He pointed out that the letter was not intended to interfere with the course of justice but was sent in a letter that an enquiry might be made into the conduct of the learned Magistrate who he alleged had been corrupt. The President Office forwarded the petition to the District Magistrate of Dehra Dun for necessary action. The District Magistrate of Dehra Dun did not call upon the opposite party to substantiate his allegations. He in fact, did not hold any enquiry but took the view that the letter constituted a contempt of court and referred it to the Legal Counsellor to Government. Thereafter this Court was moved in minute contempt proceedings and notice was issued by the District Judge on the 6th June, 1958 to the opposite party to show cause why he should not be punished.





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regarding the integrity, ability or honesty of the judge or in doing actual and prospective injustice from placing complete reliance upon the *opini*, administration of justice or if it is likely to cause embarrassment in the mind of the judge himself on the discharge of his judicial duties.

Now, there can be no question of causing embarrassment upon the mind of the judge himself to the requirements of the law after the disposal of the case. There was no case pending before the learned Magistrate or before any other court at the time the representation was sent to the Prime Minister. The letter was sent to a person who the opposite party thought was the appropriate authority. Actually, the Prime Minister was not the proper authority to be approached. Anyway there was here no publication to the public or any section of the public. The letter was in the form of a confidential letter. It was not per registered post. Even there may have been publication so far as the representation is concerned from the point of view of the law of libel. The letter is just a form of a libellous character and the Magistrate when it seeks to define has a remedy by way of a libel suit or a criminal action for defamation against the opposite party. The question however is whether the opposite party can be held to be guilty of contempt on the ground that he is doing his best to avoid the court or through the administration of justice was obstructed or compassed. A letter sent to the Prime Minister and not intended to be broadcast to the public or any section of the public cannot create an apprehension in the minds of the people or not the business of the Justice Magistrate, regarding the integrity, ability or honesty of the judge. Further it could not do actual and prospective injustice from placing complete reliance upon the court's administration of justice for the obvious reason that there would have

nothing there it is not having been published in them. It may be suggested that again to use the language of Mr Justice Macnaghten, the object of contempt proceedings is not to afford protection to judges personally from imputations to which they may be exposed as individuals. It is rather intended as a protection to the public whose interests would be very much affected if by the act or conduct of any party the authority of the court is lessened and the sense of confidence which people have in the administration of justice is weakened.

It is well known that the contempt jurisdiction is a summary jurisdiction. The jurisdiction should be exercised, as is observed by Lord Romer, L. C. J.

with scrupulous care and only when the case is clear and beyond reasonable doubt. [vide R v Gray (1)]. This Court is reluctant to use that weapon except in order to maintain the dignity of the court and to uphold the authority of the law. It may be emphasized that the Supreme Court view, as we said it, is that courts should be reluctant to take notice of wilful contempt of court. There must be something to show that the contempt was likely to interfere with the due administration of justice or undermine the confidence which the public rightly reposes in courts of law as organs of justice. In the particular case, while the attack on the Magistrate is of a vile character, these particular facts are not enough. For these reasons we do not think that the remedy of contempt is the appropriate remedy for the Magistrate. We have come to the conclusion that on all the circumstances of the case it is not desirable to award costs to the applicant.

The application is dismissed but without any order as to costs and the notice is discharged.

in L.R. [1911] 1 K.B. 191

Order accordingly

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## CIVIL MISCELLANEOUS

*Before the Honorable B. Mulla, Chief Justice and 11<sup>th</sup>  
Justice Bhagwati*

RAM SHARIF RAMSUDHANAL (APPLICANT)

10/1  
September  
1934  
10/1/34

B

COMMISSIONER OF INCOME TAX, GONDIA.  
PART II

*Under Income Tax Act, 1922 s. 48 (2)—Closing stock valued by assessee at market rate—Stock valued by assessee at rate prior to previous year—Whether assessee entitled to take the cost of market rate*

The assessee is a firm carrying on wholesale cloth business showed a total turnover of Rs. 1,14,111. The receipts showed a balance of Rs. 1,115 in favour of assessee. After deducting expenses he showed a net loss of Rs. 1,115, and in preparing the Profit and Loss Account he valued his closing stock at the market rate at Rs. 1,14,111. The cost price of the stock was Rs. 1,17,615. The Income-tax Officer, the Appellate Commissioner and the Tribunal were all of opinion that the stock should have valued his closing stock at the cost price as he had been doing in previous years.

*Legal questions referred*

Held that it cannot be said that the assessee was not entitled to value his closing stock at market value. Because for Depreciation would not mean that the assessee had always valued his stock at cost price but that was nothing on the record from which it could be deduced that in those years the market price was low.

*Miscellaneous Case no. 104 of 1933*

*The facts appear in the judgment*

*Judicial Review for the applicant*

*B. L. Gupta for the assessee, S. 111*

The influence of the Court was distorted by—

**MAJ. U. J.**—The question referred to the Court for its decision is in compliance with an order under section 40(3) of the Indian Income-tax Act is—

1. **Introduction**  
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Whether on the facts and in the circumstances of this case, the estate was entitled to value his closest stock at market price.

The assessee is a firm mainly carrying on wholesale cloth business. The accounts produced showed a total turnover of Rs 12,91,770. The receipts showed balance of Rs 9,504 as in-advance of the assessee. After deducting various expenses the assessee however worked out a net loss of Rs 14,917. In preparing the Profit and Loss Account the assessee had valued his closing stock at the market rate at Rs 1,48,181. The cost price of Rs. and stock was however Rs 2,22,915. The Income tax Officer was of the opinion that the assessee should have valued his closing stock at the cost price as he had been doing in previous years and he added back the difference between Rs 2,22,915 and Rs 1,48,181 i.e. Rs 88,738. The Appellate Assistant Commissioner and the Tribunal agreed with the decision of the Income tax Officer.

The average had pleaded that, by word-method of the average was that at the end of the year, for the purpose of the preparation of his Profit and Loss Account, he used to value the closing stock either at cost price or at market price whichever was lower, and that he had followed the same practice in the year in question. He further pleaded that by reason of the temple festival remittances which come was down in June 1934 there was an appreciable fall in the market price and he did not expect any reimbursement of the cost and the fact of Price was greater than he had paid for the stock.



is only to be taken during such an accounting period and the taxpayer must first elect to use a closing principle. In the normal case, the account of profit and loss is to be made up for the purpose of ascertaining that difference must be brought consistently with the ordinary principles of commercial accounting, so far as applicable and in conformity with the rules of the Income Tax Act or of that Act as modified by the provisions and schedules of the Acts regulating Excess Profit Taxes, as the case may be.

These  
cases  
show  
that  
the  
Revenue  
authorities  
are  
entitled  
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require  
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No account picture of the profits and loss account can be had unless the opening and the closing stocks are also taken into account. Two principles have now become well settled: (1) that the income is computed by taking the closing stock either at cost price or market value whichever is lower, and (2) that the value of closing stock must be the value of opening stock in the succeeding year, that is an annual account closing accounts and takes the stock at a particular figure and the next morning on the first day of the next year the current value is at a different figure. In *Halsbury's Laws of England*, Halsbury's Digest, Volume 17, page 124, paragraph 124 is as follows:

"It is to be observed that the allowance by the British Revenue authorities of a writing down of stock when market value is lower than cost is in effect the allowance of a reserve for a future or reduced loss, and as such is an exception to the general rule that provisions, reserves, etc. are not allowable."

In *Inland Revenue Commissioners v. Lord, Russell & Co. Limited* (3) it was held that in valuing stock in trade for the purpose of ascertaining the profits of a business for revenue purposes it is proper to ascertain such cost of stock separately and to take it at cost, or value if at

(3) 11 T.R. 101, 102.

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market value whenever it is the lower. (See sec. 1, § 804 of the U. S. Code, and § 101 of the Regulations of the Internal Revenue Service.)

The correct method of dealing with this case would be to make it up by reducing the cost or market value whichever is the lower of the values in the report cited.

In *Spicer and Fegley's Financial Accounting*, Sixth Edition, page 129, lists of valuations of stock is laid down as follows:

Stock should be valued at cost or market value whichever is lower at the date of the balance sheet.

In this connection the term market value means either the replacement value or the selling price whichever is the lower.

In no case should the value be higher than cost even though the market value has risen, as this would result in taking profits before the sale is effected and the profits taxed. On the other hand a fall in the market value, due to a fluctuation in the price, need not be considered if the value has once risen. A permanent fall in value, however, must be taken into account.

Stock is a floating asset, and as such must be brought into account at its realizable value when the value is lower than cost.

The reason for this has been given by CHARLES THOMAS, Chief Justice in *Commissioners of Insurance, State of Connecticut v. Connecticut Liberty Bk.* 105 Conn. 503, 136 A. 2d 101, 102 (1934), 103 (1935), 104 (1936), 105 (1937), 106 (1938), 107 (1939), 108 (1940), 109 (1941), 110 (1942), 111 (1943), 112 (1944), 113 (1945), 114 (1946), 115 (1947), 116 (1948), 117 (1949), 118 (1950), 119 (1951), 120 (1952), 121 (1953), 122 (1954), 123 (1955), 124 (1956), 125 (1957), 126 (1958), 127 (1959), 128 (1960), 129 (1961), 130 (1962), 131 (1963), 132 (1964), 133 (1965), 134 (1966), 135 (1967), 136 (1968), 137 (1969), 138 (1970), 139 (1971), 140 (1972), 141 (1973), 142 (1974), 143 (1975), 144 (1976), 145 (1977), 146 (1978), 147 (1979), 148 (1980), 149 (1981), 150 (1982), 151 (1983), 152 (1984), 153 (1985), 154 (1986), 155 (1987), 156 (1988), 157 (1989), 158 (1990), 159 (1991), 160 (1992), 161 (1993), 162 (1994), 163 (1995), 164 (1996), 165 (1997), 166 (1998), 167 (1999), 168 (2000), 169 (2001), 170 (2002), 171 (2003), 172 (2004), 173 (2005), 174 (2006), 175 (2007), 176 (2008), 177 (2009), 178 (2010), 179 (2011), 180 (2012), 181 (2013), 182 (2014), 183 (2015), 184 (2016), 185 (2017), 186 (2018), 187 (2019), 188 (2020), 189 (2021), 190 (2022), 191 (2023), 192 (2024), 193 (2025), 194 (2026), 195 (2027), 196 (2028), 197 (2029), 198 (2030), 199 (2031), 200 (2032), 201 (2033), 202 (2034), 203 (2035), 204 (2036), 205 (2037), 206 (2038), 207 (2039), 208 (2040), 209 (2041), 210 (2042), 211 (2043), 212 (2044), 213 (2045), 214 (2046), 215 (2047), 216 (2048), 217 (2049), 218 (2050), 219 (2051), 220 (2052), 221 (2053), 222 (2054), 223 (2055), 224 (2056), 225 (2057), 226 (2058), 227 (2059), 228 (2060), 229 (2061), 230 (2062), 231 (2063), 232 (2064), 233 (2065), 234 (2066), 235 (2067), 236 (2068), 237 (2069), 238 (2070), 239 (2071), 240 (2072), 241 (2073), 242 (2074), 243 (2075), 244 (2076), 245 (2077), 246 (2078), 247 (2079), 248 (2080), 249 (2081), 250 (2082), 251 (2083), 252 (2084), 253 (2085), 254 (2086), 255 (2087), 256 (2088), 257 (2089), 258 (2090), 259 (2091), 260 (2092), 261 (2093), 262 (2094), 263 (2095), 264 (2096), 265 (2097), 266 (2098), 267 (2099), 268 (2100).

I should add that the accepted rule is that the cost to be included in the floating stock figure is 10% of the value of the stock. (See *Spicer and Fegley's Financial Accounting*, Sixth Edition, page 129.)



will either the cost price or the market value whichever be the less a provision obviously intended to be in favour of the trader and dealer has more weight as than than his loss.

The learned Chief Justice RAGHAMAN, J. in *Commissioners of Income-tax and Excise Duties v. M. S. Ramani & Sons* (1) has said:

“It is  
the  
rule  
that  
the  
cost  
price  
is  
to  
be  
taken  
into  
account  
in  
determining  
the  
loss.”

The accepted basis of valuation of stock is, not its cost price, whichever is lower, is the basis to which the accounts for a period are made up.

To support the reason for the rule the learned Chief Justice has observed as follows:

“It has not occurred to the members of the Bench which allows an assessee to value the market value when it is lower than the cost it appears to be true. If one were to suppose a rule taking place on the closing day of the current stock, it is reasonable to expect that the trader of which the market value is lower would do something more than at those times, and therefore loss would be certain. But there would be no reason why there would be a market for the current stock of articles of which the market value is higher and therefore it would be irrational to assume that the current stock would be sold at the prevailing market rate and accordingly bring in a profit.”

It must not be the reason for the rule as it is well settled that while the Income-tax Department is not entitled to compute profits and compute such and reported profits, in valuing the stock it has given a concession not by way of favour but by the general principle of conservatism, so valuing the closing stock at cost or market value whichever is lower so that he can be able to spread out his loss.

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Income-tax  
Act  
1922  
Section 19  
Income-tax  
Act  
1922

In the case before us on behalf of the Commissioner of Income-tax reliance is placed on the fact that the assessee has not claimed that he made a change in the method of accounting and he pleads that he had always been valuing the stock at market price on cost price valuation was long has not been struck as he was. On behalf of the Commissioner of Income-tax reliance is also placed on the fact that the assessee had always been valuing his stock at cost price and it is said that he is bound by the method of accounting regularly followed by him and as he has not even alleged that he had made a change in the method of accounting, there is no reason to put him at relief.

Section 19 of the Income-tax Act makes a claim that the Income-tax authorities are bound to accept the method of accounting regularly employed by the assessee for computation of his income unless the method employed by him is such that in the opinion of the Income-tax Officer the income profits and gains cannot properly be deduced therefrom. In this case the Income-tax Officer has been given the right to make the computation on such basis and in such manner as he may determine. Section 19 of the Income Tax Act is as follows—

Method of accounting—Income profits and gains shall be computed for the purposes of section 19 and 21 in accordance with the method of accounting regularly employed by the assessee.

Provided that if no method of accounting has been regularly employed or if the method employed is such that in the opinion of the Income-tax Officer the income profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may deem meet.

1927  
 THE  
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 HAS A NEW  
 LOOK  
 A  
 LARGER  
 SERVICE OF  
 THE COMMUNITY  
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As regards the taxpayer's right to change the method laid out counsel for the Commissioner of Income tax has ruled that though the taxpayer may have the right to change the method of accounting adopted by him, one method of accounting can be replaced only by another regular method of accounting. In *Norwin Peter Hansen Andersen v The Commissioner of Internal Revenue*, *Bombay (2)* *Lawson*, Chief Justice, said:

Although I think it is open to any taxpayer to change the regular basis on which he keeps account, still if he seeks to do that he must satisfy the Commissioner on proper evidence that he has in fact changed the regular basis of accounting. I do not think here he did so. In fact change the regular basis of accounting except for the particular half year, and if the company had been scrutinized upon and had contained the agreed agreement as before there is nothing to show that the basis on which the account had been kept in the past would not have been continued in future.

On behalf of the Commissioner of Income tax it is shrewdly urged that unless it is established that the taxpayer has now adopted a regular method of accounting of valuing his stock at market price or cost price whichever is less, he should not be allowed to value the closing cost of the market price which was lower in the accounting year in question. Reliance is placed on the observations of their Lordships of the Federal Council in *Commissioner of Internal Revenue, Bombay, Providence v Allamattah Nara Cotton Mills Company Limited (2)*, that:

The one thing that is essential is that there should be a definite method of valuation adopted which should be carried through from year to year so that in case of any deviation from that

THE  
FARMER'S  
BUDGET  
1889  
CHAPTER  
XIV  
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FARMER'S  
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1889

market value in the case of the work in the close of one year it will be decided by the market in the next year.

We were a long time inclined to the view that the whole method of accounting is a very serious one, not only to the question of the value of the closing work but even whether the two we had been keeping has account on cash basis or on inventory basis or had fallen of the hybrid system of accounting, that is partly market and partly cash. In view, however, of the observations made by these Landlords at the Judicial Committee in Commission of Agriculture, London, February 1, 1889, and the fact that the Court had found that the method of accounting was a very serious one, we have decided to be guided by the method of accounting.

We have decided and that it has been found that the market had all along been rising in work at one price. It has not been found on behalf of the Farmers that in any year the market price was less than the cost price. It cannot therefore be said that the market was following the method of raising the work at one price even though the market price might have been less. Under the well understood system of accounting the market had the right to raise his closing work at market price or cost price whichever was less and in the absence of a proof or finding that the market had been raising his work at cost price even though the market price might have been less or in the absence of evidence that in any year the market price was less than the cost price it cannot be said that he has made a change in the method of accounting. We doubt the market has not understood his plan of raising the work at one price.

that in 1934 the respondent valued his stock at cost price or market price whichever was less, but the learned tax official was entitled to add back any sum of Rs. 15,750 to the cost of shares in the income tax. The respondent admitted that there had been a change in the regular method of accounting employed by the respondent the year 1934, and stating that there had been such a change was struck up the department. In the statement of the respondent the Tribunal has still that, up to 1934, there is a method as proposed by the respondent prior to that he has stated his opening and closing stocks in a value more or less rough manner, as all these years the cost price was lower than the market price. Learned counsel on the Department had, however, to admit that the rule that known was that the assessee had always valued his stock at cost price, but there was nothing in the record from which it could be deduced that in those years the market price was low. In the circumstances it does not appear to be possible to draw an inference that the assessee had adopted the regular method of valuing his stock at cost price even if the market price was lower and, consequently, in valuing his stock in the accounting year in question at the lower market price it cannot be said that the assessee was changing the regular method of accounting employed by him in the past. It cannot therefore be held that the assessee was not entitled to value his closing stock at market rate. Thus it now arises as to the question referred to us for decision.

It is to be noted that this is a case in which the assessee should get his case in the plea before him, but he had always been valuing his stock at cost or market price whichever was lower, had been required by the Tribunal and no reference was called for upon facts on that point.

*Question answered*

THE  
HONORABLE  
MEMBER  
OF  
THE  
INCOME-TAX  
APPEALS  
COMMISSION  
FOR INDIA  
S. 16, 7-8

## APPELLATE CIVIL

Before Mr. Justice Macleod and Mr. Justice Eames

**CONCLUSION** The proposed method is a simple and effective way to detect and remove outliers from the data. The proposed method is easy to implement and can be used for a wide range of data sets.



Dr. COLONEL NATHAN MARIE MEE MOHAMMAD  
UMAD SAID ELHAN (Platoon)

**United Fruit Company, Ltd., 1938.** c. 35—A young woman carried in by a couple in a palanquin, her house—Preparation of the village children, exhibited to them for a Purge—Fire scene of the village of a girl.

If the proposition of a village that a man to start a home, if a woman had a lot by water a man of the 3 in person for three years on the diagonals that if a man carrying on working work, in a garden a house made his home, and that according to the custom awarded an inheritance if was decided on them a man of the 3 you take an object for the use of land on which only one existed.

The doctor said that it was a mouse, and he'll have something to worry humans in his transformed house once they find that the mouse in the village pay no more for their house.

*Hold* that the parenting was not, on the facts established, in the nature of a compensation for loss but for carrying on the work of a minor's profession until his father, and there were no reasonable doubts.

© 2004 Blackwell Publishing Ltd *Journal of Internal Medicine* 255: 105–112

Letter Patent Appeal no. 47 of 1941 from a decision of J. R. W. Rivett J. dated the 22nd April, 1941 on Second Appeal no. 97 of 1940.

The beds appear to be undisturbed

Allegations that Google has the upper hand

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The judgments of the Court was delivered by...

Butts, J. —This appeal is directed against the judgment and decree dated the 13th March, 1880 of a learned single Judge of this Court.

The facts which have given rise to this appeal are, he stated, shortly: The plaintiff respondent is the proprietor of a village of which the defendant is a resident. The defendant-appellant is a woman being a Koli by caste. The plaintiff respondent's case was that he was entitled to recover from the defendant-appellant a sum of Rs 1 as payable for a period of three years. The case as put forward by the plaintiff respondent was that the defendant-appellant being a Koli by caste, was carrying on weaving work, in the village that is contiguous with that work, there exists a path or a loose road to his house and that an interference with the running is recorded in the registers, the plaintiff respondent was entitled to claim a sum of Rs 1 a year as payable for the use of the land on which she carries on work.

The case was remanded by the defendant appellant, on the ground that he was a tenant from the time of his arrest, that he had been carrying on washing business in his residential house, that the police in the village pay no rent for their houses and that he was not liable to pay any special rate; the charge claimed being in the nature of a case.

The learned Master deemed the plaintiff's evidence convincing, holding that the defendant-appellee was liable to pay it as ground rent, the charge being not a cost or a tax on production. Aggrieved by the judgment and decree of the learned Master, the defendant-appellant went on appeal to the lower appellate court. The view taken by the learned Additional Civil Judge was different from that which had







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BOMBAY  
LEGISLATIVE  
COUNCIL  
IN  
SESSION  
1854  
JANUARY  
1854  
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Government in the official Gazette, be responsible in any civil or revenue court unless such case is sanctioned under the provisions of subsection (2)."

In interpreting this section it must be remembered that no tax can be levied on the owners of any land which is leased in accordance with village customs unless it is sanctioned by the provisions of subsection (2) of section 11. Subsection (2) authorises the Provincial Government to sanction the collection of any levy levied on account of any house or land and subject to the collection of such tax any such condition regarding ownership, piling or other encumbrances is a condition. Obviously the levy in this case is not of the character contemplated by subsection (1). The object of the legislation in enacting this section appears to have been to restrict the right of the zemindar to levy any summary charge in virtue of a superior proprietary nature.

The levy is in the nature of a tax on the proprietor. In *law*, Reference as to the part of the case may be made to *the Kalghatgi v. Mafzal Company Ltd.* (1) In that case the question was whether the Manager, Proprietor of the temple in Branch was entitled to a levy or percentage, as tax, of two annas per bul on all cattle brought in and exported from Branch, inasmuch as Act XIX of 1844 had abolished all taxes and duties of every kind on trades and professions within the limits then leased within the Presidency of Bombay, and the leasing part of the land revenue it was held by three Lords of the Privy Council of the Judicial Committee that the tax was in the nature of a tax not leviable by the Managing Proprietor of the temple. On the analogy of that case we shall attempt to hold that the payment was not on the 14th established in this case in the nature of a compulsory

leave the Court but for carrying on the work of the practitioners of a narrow trade the defendant appellants have and no work was inevitable.

It may be suggested that according to the view taken by the Full Bench in the case of *Allen & Davis v. Allen & Co.* (1) the question whether a particular demand is a cost or ground rent has to be determined on the circumstances and evidence of each case, though the issue by which the demand is generally known and is recorded in the register of the land is one of the evidence of the purpose for which the demand is levied and is helpful in determining the true nature of the demand. We have shown that in this case having regard to all the surrounding circumstances and not doing the lay tax in the name of a cost.

The result is that we allow the appeal on both the judgments and costs of the learned judge, Judge and costs of the lower appellate court. In the circumstances in the case we make no order as to costs.

*Appeal allowed.*

The  
Court  
has  
decided  
that  
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demand  
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a  
ground  
rent.  
The  
costs  
of  
the  
appellants  
are  
allowed.  
The  
costs  
of  
the  
respondents  
are  
not  
allowed.

## GENERAL INFORMATION

Author(s)	Title	Journal	Year	Abstract	Keywords
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**THE UNIVERSITY OF CHICAGO**



THE INSIDE OF THE MIND: KAPLAN, the  
common-sense philosopher

**Characterization of Islets.** On Day 18 (Fig. 1g)—Ectopic of a putative islet was revealed after  $\alpha$ -panc<sub>1</sub>—Positive, presence of the IS (Fig. 1g) could be used.

Before the launch of a pilot case study, carried by the College of E-learning from its website, the participants were a list of 10 names composed was compiled and holding an email.

30–35 °C for the polymer-water system, the liquid state, and the  $\alpha$  and  $\beta$  relaxations of the polymer, at low ( $10^3$ – $10^4$ )  $\omega$  of the  $\alpha$  relaxation.

Final Recommendations: see 1974 and 1975.

The term appears in the modernized

**Abstract:** *Abstract of this article is not available.*

The Working Group on the proposed program

MODERATOR J. — This is a person named Soule 216 of the Comanches which in my opinion is never saved. The petitioner is a person named who held a license issued by the Collector of Kansas which permitted him to exercise his privilege within the Collection at Kansas. For the license the petitioner made a currency payment of five dollars. Soule was once earlier in the case that the petitioner had been responsible for the injury of an unknown person, being admitted to the District and American Judge. Kansas An aspect of case had been held and on the 12th of

has. Thus, the petitioner's licence was a petition which was cancelled in an order which reads as follows:

The following licence no. 11 issued to Sri. Madaiah had been a copy of the Collector's Order compound. Kangan has been cancelled for a period of five years with effect from 20th August 1947 for having worked in an irresponsible manner.

No application of papers which he has should be entertained in any case.

The petitioner has come to the Commission which he states is in the nature of a sentence to quash that order of the 1st September. He claims that he has a fundamental right to carry on his profession as petitioner in the Collector's compound and that his licence as he cancelled with respect of the continuance of use of the compound subject to which it was issued.

Mr. Ahmed I. Ali, J., who has strenuously argued the case for the petitioner has been at least wholly unable to satisfy me that the petitioner has any legal right to claim a fundamental right to carry on his profession or business in the Collector's compound. The petitioner's case is that wholly disregarded for that of a person who is required by law to obtain a licence is a condition of carrying on his business or profession at all. Where the law lays down this, a particular occupation cannot be carried on save under a licence then the withdrawal of a licence has the obvious consequences of which are raising the person concerned from carrying on that business and the question may very well arise whether they has been contravention of the provisions of Article 19 (1) G. of the Constitution. That appears to me very far from

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Sri. Madaiah  
Petitioner  
vs.  
The  
Collector,  
Kangan,  
District  
Mysore  
No. 11  
1947

The  
 —  
 The Collector  
 Vs. —  
 The  
 prisoner  
 Ram-part  
 Karpur

the petition in the present case in which it is not in dispute that the petitioner is free to carry out his occupation in any place other than the Collectorate. The petitioner has, in my opinion, no right to carry out his business in the Collectorate, independent and viz. the permission of the Collector, and if that permission is withdrawn, the petitioner may have a grievance, but I cannot see that he has any legal remedy, unless it can be founded on breach of contract. The remedy for breach of contract is of course by writ of *certiorari*. The petitioner must show that there has been a legal right and that there has been an abridgement of that right, and in my opinion he has failed to do so.

The order of the 1st September contains however, no promise (which, though no objection is made, has been taken in the petition) and no argument has been adduced as to its on behalf of the petitioner. Hence, it is cancelled, he is warned. I refer to the petitioner that no applications or papers written by him should be entertained in any court. Although no doubt intended to be obnoxious only, unless the Collectorate this petition is clearly one which it is none of the powers of the officer making the order, and the House of Standing Council has very properly given the court an undertaking that this sentence will be deleted from the order.

The petition must be dismissed, but in the current session I would make no order as to costs.

NOTE J — and concur. The petitioner was the holder of a house for working as a mine-superintendent in the most important Collectorate, Karpur. His house was cancelled by the Officer in charge Mining Collectorate, Karpur. We understood that the officer is the Civil Magistrate, Karpur. The order directs that the mining licence of the petitioner should be cancelled.

for a period of five years, and that no application or papers must be laid should be presented to any court. The petitioner has come to the Court under Article 228 of the Constitution and the relief that he seeks is that of certiorari quashing the order of the 1st September, 1969. Certain other consequential reliefs have also been claimed.

1969  
September  
1st  
The  
Petitioner  
vs.  
The  
Collector  
of  
Muziris  
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Page 2

My Friend Uthai Eyy who appears for the petitioner contends that the petitioner has a fundamental right under Article 19(1) to carry on his business, trade or profession and that this right has been invaded with his due order in question. I cannot understand how the petitioner can be said to have a fundamental right to carry on business in a place belonging to some other person and in this case the State. The Collectorate compound is the property of the State Government and as far as I can see the proper person to look after it is the Collector. The order cancelling the licence was passed by the City Magistrate as he was the officer deputed by the Collector to look after the Collectorate compound. Before the petitioner can come to the Court for relief under Article 228 of the Constitution it is incumbent on him to show that he has a legal right and that there has been an infringement of that legal right. In this case I can see no infringement of any legal right. The petitioner has not been able to establish what legal right he had to the unrestricted use of the Collectorate compound for working as a petrol station. There is no analogy between this case and that of a person who cannot carry on his profession, trade or business in all without a licence. The cancellation of a licence in a case of this nature would deprive a person of the means of his livelihood. In this case the cancellation of the licence involves no such consequences for it is still open to the petitioner to carry on his business elsewhere than in the





he had clearly no right to incorporate. It was not open to him to prevent the petitioner from earning his livelihood by representing as places other than the Collectorate compound. The constitution of the licence allowing him to work in the Collectorate compound for a period of five years for establishment was in itself a severe punishment and I cannot understand how the Civil Magistrate thought that it was right or proper that he should go out of his way to give an order which is highly prejudicial to time and spirit. Had it not been for the fact that the learned Sessions Council has very properly given us an assurance that this part of the order will be expunged from the order I might have considered the question whether we should not interfere with part of the order passed by the Civil Magistrate. The learned Sessions Council has given us the assurance that this part of the order will be expunged and I have no doubt that the undertaking will be honoured.

Having regard to the fact that the petitioner has not been able to make out a case for the infringement of any legal right there is no allowance for or cost to dismiss the application. But, in the circumstances of this case, I would make an order as to costs.

[illegible]

## APPELLATE CIVIL

*Before the Honourable B. Bhalik, Chief Justice and  
Mr. Justice Sajwan*

MOHAN LAL AND OTHERS (Appellants)

*The  
Respondents*

GOLAKAN SINGH (Attorney General)

United Provinces Encumbered Estates Act, 1906 = 1(p) as it  
is called in the Act.

A decree under the Encumbered Estates Act is a decree which has the character of a decree which is not only a personal decree but also includes a liability on the estate of the debtor.

Letters Patent Appeal no. 10 of 1950 from a decree of the Court of Sessions, Allahabad, dated the 10th August 1949 in Second Appeal from Order no. 1 of 1948.

The facts appear in the judgment.

*Substantive Point, for the appellants:*

*From Mohan Prasad, for the opposite party:*

The judgments of the Court was delivered by—

MAJORITY, C. J. —This is a Special Appeal against the decision of learned single judge. The facts of the case are that Mohan Singh and his wife Mahan Singh had mortgaged certain properties to Mahan Lal and others in the year 1918. On the 1st of February, 1932 Mohan Singh sold his half share in one of the villages to Subedar Singh. A suit on 15 of 1932 was filed by Mahan Lal and others against the mortgagors but Subedar Singh was not impleaded. The preliminary decree was passed on the 21st of April, 1937 and the final decree on the 4th of March 1939. In the year 1950 Mohan Singh and Mahan Singh applied under the Encumbered

**Issue.** **Act.** Mohan Lal and others claimed that they were creditors and they proved their debt. On the 11th of March 1909, a decree under section 14 of the Encumbered Estates Act was passed in their favour against the landlord applicants. In the year 1900 Debendar Singh told the 8 business share purchased by him in 1892 to Gokarn Singh. This share had been included by Bhon Singh and Hukam Singh in the list of properties belonging to them. Gokarn Singh filed an objection under section 11 of the Encumbered Estates Act in the year 1914. His objection was allowed and the 8 business share was excluded from the list of properties belonging to the landlord applicants. Mohan Lal and others if-on filed an application under section 9(5) (d) of the Encumbered Estates Act for appointment of the debt on the ground that Gokarn Singh being in possession of a part of the mortgaged property, was liable to pay a portion of the debt and the debt should therefore be apportioned between the landlord applicant and Gokarn Singh. The trial court granted the application and held that Gokarn Singh was liable to pay Rs 741. Gokarn Singh filed an appeal and the learned District Judge allowed the appeal and set aside the order of the trial court on the ground that Gokarn Singh was not a joint debtor. On a further appeal to the Court, the learned Judge affirmed the decision of the lower court and dismissed the appeal but for different reasons.

The learned Judge however gave leave to file a special appeal and this appeal has been filed against his decision. The appeal was rightly dismissed by the learned single Judge though in our view the appeal should have been dismissed for reasons other than those given by the learned single Judge. The learned Judge was, of the opinion that a debtor under the Encumbered Estates Act was a person who was personally liable for the payment of a debt and the apportionment of a debt could there-

trial  
Mohan Lal  
&  
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1909/1/1

fore, be made only between co-defendants personally liable for payment. The learned judge relied on the first part of section 4 of the Encumbered Estates Act in support of this proposition. Relevant portions of section 4 are as follows:

At any time within one year after the date on which this chapter [chapter III] comes into force any landlord who is subject to or whose immovable property on any part thereof is encumbered with private debt

The learned judge found that a landlord subject to a debt for which there is personal liability, and if however there is no personal liability, he is not subject to the debt and the debt is only recoverable from the property.

We do not think that this reasoning was with great respect to the learned judge sound. All that the section means is that the landlord should be liable for so, and so unsecured debt before he can apply under the Encumbered Estates Act. Even a debtor who is not personally liable but whose property is liable to be taken in satisfaction of his debts can apply under the Encumbered Estates Act. The word *debtor* has not been defined but debt includes [see section 3(a) Encumbered Estates Act] any pecuniary liability except a liability for unliquidated damages. A *debtor* therefore, is a person who has any pecuniary liability; it does not mean that the pecuniary liability must be personal liability and will not include a liability recoverable only from his property. We therefore do not agree with the reasoning of the learned judge but there are other reasons why this appeal must fail.

We have already pointed out that when the mortgagees filed the suit on the basis of the mortgage in the year 1889 they did not implead Subedar Singh and the

decree obtained by them was only against the original mortgagees Bheki Singh and Mahan Singh or their heirs. The mortgagees had no right to file a suit set on the basis of the same mortgage and obtain a decree against Subedar Singh. Order XXIV rule 1 of the Civil Procedure Code applies (Hindu).

Subject to the provisions of the Code all persons having an interest, either in the mortgage security, or in the right of redemption shall be joined as parties in any suit relating to the same.

The rule does not say what would be the consequence of non-judicial sale of some of the persons interested in the mortgage security as in the right of redemption. There has been considerable difference of opinion in the High Courts as to the point whether the result of such non-judicial sale must prove fatal to the suit or it is possible to apply to it the provisions of Order 1 rule 9 of the Code. If the defect is detected during the pendency of the suit and the period of limitation has not expired, it is always possible to remedy the defect by imploding those who had been wrongly left out, but unless the integrity of the mortgage has been broken the mortgage is one and the liability of the mortgagors is joint and several and it is difficult to see how a second suit can be brought against some of the mortgagors who were not implicated in the first decree for sale. Even if, however, it be assumed that a second suit against Subedar Singh could be filed, the period of limitation for such a suit expired on the year 1918 on the expiry of twelve years from the date of the mortgage.

See *Belknap v. Bond*, 100 F.2d 1018, 1021 (9th Cir. 1936), cert. denied, 298 U.S. 650 (1936), where the court stated that the Government cannot sue on the basis of a promissory note which was not filed in, or covered by, the provisions of section 7 of the

Encumbered Estates Act. If there was a joint debt and Mohan Singh, Hukam Singh and Subedar Singh were co-debtors it was not open to the mortgagees to file separate suits against each co-debtor for sale of the mortgaged property and obtain separate decrees. They should have, in accordance with the provisions of Order XXIV, rule 1 of the Code of Civil Procedure, implored all the co-debtors as parties to the suit. If on the other hand by some process of reasoning, not clear to me, the debt got so split up that the mortgagees had a right to file separate suits against each mortgagee then there was no reason why the limitation against them who had not applied under the Encumbered Estates Act should not operate in 1902.

There is one more reason for dismissing the appeal. Gokarna Singh had filed an objection under section 13 of the Encumbered Estates Act and his objection was allowed. In a proceeding under section 11 of the Encumbered Estates Act the learned Special Judge has to determine whether the property claimed by an objector is liable to be sold or mortgaged in satisfaction of the debts of the landlord applicants. By granting the application under section 11 of the Encumbered Estates Act the learned Special Judge must be deemed to have held that the property claimed by Gokarna Singh was not liable for the debts of the landlord applicants. After that decision it was no longer open to Mohan Lal and others to claim that Gokarna Singh was a co-debtor and there should be apportionment of the debt.

The appeal is, therefore, no force and is dismissed with costs.

*Appeal dismissed.*



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*Support provided at the following:* • *Parg. Dicks (7)* advised on  
and J. A. Roberts - *Support (7)* disengaged

First Appeal no 114 of 1946 commenced with Civil Revision no 102 of 1947 from a decision of B. E. Chaudhary, Additional Civil Judge, Benares. Dated the 30th April 1956.

**The best reason to be**

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1. **Introduction**

The motions of the Court were deferred by—

**PARAJ. J.** —MAYN: C. P. Keltner & Co., Ltd. 404.  
issued a suit against the Defends. Based of Romania for a  
declaration that they were not liable to pay any amounts  
taxes and property tax to the defendant and that the  
defendants paying such a tax on the plaintiff was unre-  
served and illegal and for the recovery of the amount that  
had been realized by the defendant from the plaintiff  
such amount being and to be Rs 1,50,000 for the years  
1941 to 1945. Amongst various grounds that were  
alleged for the basis of the plaintiff's claim was that  
ground that the plaintiff was a quarry and refreshment  
room keeper at the Moghiana Railway Station and to  
such held a license under the Crown and did not carry  
on business there within the meaning of the U. S. and  
Revenue District Board Act No. 10 of 1920.

It may be mentioned that before instituting the writ the plaintiff had objected to the measures of the U.A. to the District Board of Revenue and had applied to the District Magistrate under section 138 of the District Boards Act against the measures of the U.A. The objection and appeal were unsuccessful.



The defendant claimed the tax on various grounds. One of the grounds was that the plaintiff did not hold a service under the Crown, as contemplated by section 114 of the District Boards Act and the other was that the tax so framed was not maintainable in the civil court in view of section 111 of the District Boards Act. Other contentions need not be mentioned as they are not material for the disposal of the appeal.

The plaintiff further alleged that in case it was held to the tax, the amount of tax could not have exceeded Rs 50 as was in view of section 124 of the Government of India Act, 1946, and the Professions Tax Law Amendment Act (Act no. XX of 1942). The trial court decreed the plaintiff's case in full. The defendant District Board of Baranasi has filed this First Appeal.

Now G. F. Koller & Co. Ltd. had also returned another case to the Court of Small Causes at Baranasi for the refund of Rs 150 repaid by the District Board of Baranasi on account of tax on circumstances and property for the year 1944-45. This case was also decreed and the District Board of Baranasi has also filed (Sec. 102 of 1947) against this decree.

We do not agree with the contention for the appellants that the tax was not maintainable in view of section 111 of the District Boards Act. If under the provisions of the District Boards Act, the District Board could not have joined the plaintiff company, a tax for a declaration on that the tax had been levied illegally could be maintained in the civil court. It was held by a Full Bench of this Court in *District Board of Farrukhabad v. Prag Dutt* (1) that if a tax is not imposed in accordance with the provisions of the United Provinces District Boards Act, the District Board can not rely on the Act to oust the jurisdiction of the civil court. We therefore, agree with the

1944  
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District  
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Baranasi  
—  
vs.  
G. F. Koller &  
Co. Ltd.  
(Appellants)  
—  
vs.  
District  
Board  
Baranasi  
(Respondents)  
—  
Appeal No. 1

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findings of the court below that the suit was not maintainable.

Section 114 of the United Provinces District Boards Act lays down the conditions and restrictions which would give the power of a Board to impose a tax, on circumstances and property under clause (a) of section 143 of the Act. One of such conditions is that the tax may be imposed on any person residing or carrying on business in the rural area provided that such a person had so resided or carried on business for a usual period of at least six months in the year under assessment. Section 114 further provides that the words "carrying on business" do not apply to persons under the Government or a local body. The expression "service under the Government" was substituted in place of the expression "service under the Crown" by the Adaptation of Laws Order 1950. The Board did not assess the tax on the plaintiff on the basis of his residing within the rural area but it assessed the tax on account of the plaintiff's carrying on business in the rural area. The plaintiff claims exemption from the tax on the ground that what the plaintiff did in connection with the carrying business amounted to service under the Crown. This contention of the plaintiff was accepted by the court below in most of the cases reported in *S. J. Kishore v. Emperor* (1). The use of the expression that the plaintiff's occupation is not taxed.

On the record of the suit against the facts and of which has been filed the civil revision is a copy of the agreement between the plaintiff company and the railway within certain. The agreement refers to the plaintiff company as borrower and purports to be a contract with the borrower given to the plaintiff company by the Governor General in Council as represented by the

*Chief Operating Superintendent East Indian Railway Administration.* The agreement does not purport to be a stipulation of service between the plaintiff company and the Governor-General in Council. Its various terms (clearly as he referred to) are established what is considered to be the nature of service and of the relationship between a master and a servant. The essence of service lies in the control which the alleged master exercises or can exercise over the manner in which the alleged servant carries out the duties he had undertaken to perform.

Learned counsel for the respondent relied on the case reported in *Professing Right Society, Limited v. M. J. Hill and Another (Pillar De Dumar) Limited* (1). It was claimed in page 787

that  
"the  
plaintiff  
company  
was  
not  
a  
master  
in  
the  
law  
and  
therefore  
page 787"

It seems however reasonably clear that the final test, if there be a final test, and certainly the test to be generally applied lies in the nature and degree of detailed control over the person alleged to be a servant. The circumstances are of course, one only of several to be considered, but it is usually of vital importance. The point is put well in *Follick on Torts* 12th Edition pages 79-80.

The relation of master and servant exists only between persons of whom the one has the order and control of the work done by the other. A master is one who not only prescribes to the work, says the end of his work, but directs or as one might say direct the means also, or as it has been put retains the power of controlling the work, see per *Cardozo, J.* in *Seller v. Woodcock* (2). A servant is a person subject to the command of his master as to the manner in which he shall do his work, see per *Branson, L. J.* in *Faulstich v. Nether* (3) and the master is liable for his acts.

1 L.R. [1904] 2 K.B. 104. (2) 4 D. 1, 10 D. 104.  
3 10 D. 104, 10 D. 104.

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neglect and default, so the extent to be specified. An independent contractor is one who undertakes to produce a given result, but so that in the course execution of the work he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified before hand.

Judged by the test is laid down in this case, the agreement between the plaintiff company and the Governor General in Council does not establish the relationship of master and servant between the parties to the agreement. We may now refer to the terms of the agreement to elucidate the point. In para 1 of the agreement, the licensee agreed to undertake the catering in the refreshment rooms at various railway stations, including Mughalpur, and to run tea stalls. Under para 2 the licensee had to pay the actual cost for the use of the said refreshment rooms and electric fittings including fire to the East Indian Railway Administration. The payment of such cost is not consistent with the relationship of master and servant and fits in well with the status of the plaintiff company as licensee who had been allowed the use of these rooms and electric fittings. Under para 3 of the agreement, the licensee were required to supply to the passengers travelling in the trains at requested times refreshment and dishes of meat and wholesome food and drinks at a scale of rates to be approved of by the Chief Operating Superintendent. Para 7 to 10 of the agreement lay down certain restrictions about the selling of groceries and 11, special rates to be charged from the employees of the East Indian Railway Administration. Para 13 provides for the keeping of a complaint book in the refreshment rooms and for the inspection of the same upon demand by the Divisional Superintendents or any other official of the Railway Administration. Para 14

has shown that the servants employed by the licensee would be paid by the licensee and would be men of experience, legs, at all times, neat, and properly dressed. Under para 16 the licensee was to supply and maintain all necessary articles of furniture, etc., in the two refreshment rooms at their own expense. This again is inconsistent with the ordinary relationship of master and servant. If the plaintiff company was the servant, such articles would have been normally supplied by the master.

Para 17 provides that the licensee would keep the two refreshment rooms, kitchen, cooking utensils and all other articles neat and clean and would comply with all reasonable requirements of the Dominion Hospital tenders and of the Medical Officers of the Railway Administration with a view to the provision of sound and wholesome food to the passengers travelling on the East Indian Railway. Great stress has been laid on this provision by learned counsel for the respondents in submitting that the Railway Administration fully controlled the working of the plaintiff company. The only control which the Railway Administration could exercise by virtue of the provisions of para 17 of the agreement was with respect to the quality of the food to be supplied. The control did not extend to the Railway Administration laying down the kind of food to be supplied, the way in which it was to be cooked and any other detailed arrangements with respect to the providing of various meals for the plaintiff company had under rules to supply for. It was not open to the Railway Administration to order that any particular dish should be supplied. It was not for the Railway Administration to lay down the number of servants the licensee had to engage. The Railway Administration could not prescribe or lay down conditions with respect to the purchase of raw materials. In all respects relating to

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the running of the business the business was left to the various conditions laid down did not relate to the actual manner in which the business was to run, but related to safeguarding shareholders both as the proprietors of the fund and as to service to the passengers. Other provisions related to the reinforcement of the conditions of service laid and to the maintenance of orderly conduct at the railway stations.

Para. 24 of the agreement lays down that—

the Administration reserve the right to remove possession of any part of the premises if required, for the purposes of working of the said Railway.

Para. 25 lays down that the Administration agreed that telegrams entering refreshment rooms could be accepted for despatch by the said Railway free of charge. Both these stipulations do not fit in with the alleged relationship of the master and servant. A servant has no right against his master with respect to the accommodations in which he performs his duties and no question could arise as to finding charges on account of telegrams despatched by the Railway Administration on behalf of the passengers, in connection with its own work to be carried out by its own servants. The same can be said with respect to the stipulation in para. 28 by which the Railway Administration agreed to free carriage by rail of various articles required to be used in the said refreshment rooms and restaurants, etc.

Para. 29 of the agreement provides—

The Administration will not be held responsible for any loss or damage occurring to consignments carried free by rail under this Agreement but will take all reasonable care to secure their safe transit.

If a servant goes, articles on behalf of his master, the loss, if any, would be expected to be borne by the master, but

the stipulations have done just the contrary and, therefore, if a clear indication of the fact that the agreement did not bring into effect the relationship of master and servant between the Governor General in Council and the plaintiff company. It is clear from what has been said above and from other terms of the agreement that the licensee plaintiff company was absolutely free to use its own discretion as respect of the matters above which trading was used in the agreement in connection with the supervisory control of the Governor General in Council. We are therefore of the opinion that as already was stated the plaintiff company cannot be said to be a servant of the Governor General in Council.

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The case reported in *S. L. Rapier v. Rapier* (1) is distinguishable. A carrier on the termination of his contract did not receive the proceeds. Order to dispossess him was given by a magistrate under section 135 Railway Act which provided for such orders against Railway servants. It was held that the carrier was a Railway servant both because the expression as defined in the Railway Act applied to him and because the relationship of master and servant existed in view of various terms of the agreement between him and the Railway Administration. Some of such terms are not in the agreement between the plaintiff and the General General in Council. The Railway Administration in the present case could not treat the plaintiff as servant if about the dress its servants were to wear or about the pattern of trousers to be used. Its own mind goes to give such directions does not affect the question as they do not relate to the main work of the plaintiff which related to the preparation of wood and whalebone food. The expression Railway servant means in terms of section 137 of the Railway Act any person employed by a railway administration in connection with the service

IN THE  
SUPREME COURT  
OF INDIA  
Before the Hon'ble  
Justices  
S. S. KAPOOR  
and  
S. R. BHAZAGAN  
JUDGMENT  
IN  
CASE NO. 101  
OF 1935

the Railway. The express service of the Railway is not identical with the express service under the Contract.

We, therefore, do not consider the case to go against the view we have expressed.

The evidence about the terms of agreement between the plaintiff company and the Governor General in Council or the Railway Administration on the record of the case going into the first appeal is very meagre and, naturally, was not sufficient to establish what the complete agreement on the record of the other case fails to establish. It follows that the evidence on the record of the case going into the first appeal fails to establish that the plaintiff company was a servant of the Railway Administration or of the Governor General in Council.

It follows, therefore, that the plaintiff company was liable to be taxed under section 114 read with section 149 of the United Provinces Direct Taxation Act, 1922, and cannot get exemption on account of its business being considered to be due to service of the Crown.

Now we discuss the second contention for the plaintiff respondent with respect to the amount of tax to be levied to Rs. 50 per annum only.

Subsection (2) of section 142 A of the Government of India Act, 1919, is to the following effect.

142 A. (2) The total amount payable in respect of any one person to the province or to any one metropolitan district board, local board or other local authority in the Province by way of tax on professions, trades, callings and employments shall not, after the thirty-first day of March nineteen hundred and thirteen exceed fifty rupees per annum.

Provided that, if in the financial year ending with that date there was in force in the case of any



Provision in any such municipality, board or authority a tax on professions, trades, callings or employments means the rate, or the maximum rate, of which on stated fifty rapers per annum the preceding provisions of this subsection shall, unless for the time being provision to the contrary is made by a law of the Federal Legislature, have effect in relation to that Province, municipality, board or authority as if for the reference to fifty rapers per annum there were substituted a reference to that rate or maximum rate or such lower rate of tax (being a rate greater than fifty rapers per annum) as may for the time being be fixed by a law of the Federal Legislature; and any law of the Federal Legislature made for any of the purposes of this provision may be made either generally or in relation to any specified Province, municipality, board or authority."

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that  
 the  
 Income  
 Tax Act  
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of the tax, on circumstances and property leviable by a demand based on an assessed Rs. 50. The contention seems to be sound and has been upheld by the Full Bench of this Court in the *District Board of Faridkot v. Prop. Dist. Bd.* The only reply, which invited consideration for the appellant could give to this submission, was that the expression "any one person," in section 2 of the Professions Tax Law, 1925, must contemplate an individual and not a juristic person which the place all company is. We see no reason to restrict this expression to individuals only. Sections 188 and 194 of the District Board Act contemplate raising of any person and therefore contemplate the raising of juristic persons. There is no indication either in the provisions of section 182 A of the Government of India Act, 1919, or in any provision of the Professions Tax Law, 1925, which should justify interpreting the expression "any one person" in the restricted manner in which, it is sought to be interpreted on behalf of the appellant. We need not linger long on this question on view of a fairly early full bench decision, issued for the respondents pressed and practically after the close of the reply for the appellant.

We draw our attention to the Professions Tax Law, 1925 (Assessment and Collection) Act (Act no. LVI of 1925). This Act came in force on the 29th of December, 1925. Section 2 of this Act is

1. In the Schedule to the Professions Tax Law, 1925 (Assessment and Collection) Act (hereinafter referred to as the said Act) also known by the following names shall be inserted, and shall be deemed always to have been inserted, namely:

1A. " " " " " "

2A. The tax on persons assessed according to their circumstances and property, imposed

under clause (b) of section 146 of the United Provinces District Boards Act, 1912 (U. P. Act 3. of 1912)

Age Group	Gender	Percentage of respondents who believe the U.S. should take action
18-29	Male	~65%
	Female	~85%
30-49	Male	~75%
	Female	~85%
50-69	Male	~80%
	Female	~85%
70+	Male	~85%
	Female	~85%

5 Not throwing anything to the readers  
as you will see for the same basic as form ...

(i) no tax on construction and program imposed before the commencement of that Act under clause (a) of subsection (1) of section 198 of the United Provinces Municipalities Act, 1916 (U. P. Act II of 1916) or clause (b) of section 198 of the United Provinces District Boards Act, 1922 (U. P. Act X of 1922) shall be deemed to be in force to have been amended merely on the ground that the tax imposed exceeded the limit of five rupees per annum prescribed by the said Act; and the validity of the imposition of any such tax shall not be called in question in any court; and

(j) no court shall grant an injunction or decree for the relief of any portion of the tax referred to in clause (i) merely on the ground that such portion is an excess of the limit referred to therein or enforce any decree or order directing the refund on that ground of any portion of such tax.

The result of the Amending Act is that the tax on circumstances need properly levied under section 168 of the United Provinces District Boards Act is not subject to the limitations laid down under the Professions Tax Levysing Act and that therefore the numerous attempts of such tax can be paid as can be levied under the United Provinces District Boards Act 1922 which had been in force from before the 31st of March 1929 referred to in section 142 4 of the Government of India Act 1915. The cases have had down under the other

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framed by the U. P. Government under section 314(b) of the United Provinces District Boards Act as No. 2-808. The amount of tax levied on the plaintiff company, in any of the years in suit, is within that figure and therefore was lawfully levied.

In *Farma*, however, we noted that the Act or the Professions Tax Limitation (Amendment and Validation) Act, 1948 was void in view of Articles 11 and 13 of the Constitution as the provisions of this Act deprived the respondent of its property which had been decided in its favour by the court below with respect to the refund of the amount of tax paid by it. We need not deal with this contention at length because we find that, by the Adoption of Law Order, 1950, the main Act, namely, the Professions Tax Limitation Act (Act no. XX of 1941) stood repealed. This means that the Act did not remain in force after the coming into force of the Constitution on the 26th of January, 1950 and that, therefore, no question of its being void in view of Articles 11 and 13 of the Constitution should arise. Even if any such question arose, it would not affect the validity of the Act prior to the 26th of January, 1950 in view of the amendment carried out in the principal Act and that amendment being deemed to exist from the very first day, the imposition of the tax for an amount larger than Rs. 10 was valid and its recovery from the plaintiff company was also valid. The repeal of the Act would not reverse the rights which the plaintiff company had lost in the tax which had been realized from it validly.

As a result of our findings with respect to the plaintiff company being not exempted from the tax on its immovables and property taxable under section 100 read with section 114 of the United Provinces District Boards Act and with respect to the amount of tax being not subject to any restrictions laid down in the Professions Tax Limitation Act, 1941 the plaintiff's case should be





arrested by the second respondent. The petitioner went at once to the Superintendent's bungalow, which he reached between 1 and 3 p. m., and on arrival he was served with the following order dated the preceding day, the 12th July:

THIS  
ORDER  
OF  
THE  
JUDICIAL  
MAGISTRATE  
IS  
RETURNED  
TO  
THE  
PETITIONER  
AT  
HONOLULU  
THIS  
12TH DAY OF  
JULY, 1901.

Please inform your written explanation more fully why proceedings should not be issued against you for having obtained money from Puan Loth, resident of village Kala P. S. Nouna, in the constabulary 318 1 P. C. of village Kala, by writing, falsely stating Puan Loth, his wife Puan and his son Dem on 26 '91 and 26 '91. You must bring this explanation with you when you report to me as ordered separately in an order sent to you through S. O. Kurekoh.

The petitioner immediately wrote out and submitted an explanation in which he simply denied that he had received his money from Puan or anyone else or had confined anybody wrongfully. As soon as this explanation was handed to the second respondent, the latter passed an order regarding the petitioner and informed him that proceedings under section 7 of the Police Act would be started then and there against him.

It appears that seventeen witnesses in support of the allegations made against the petitioner were then at the Superintendent's bungalow and their statements had previously been recorded by another police officer. According to the statement of the petitioner—which as I have said has not been considered—the proceedings started by the submission of his deposition, which had been recorded in English, being translated to each witness who was then asked to sign an endorsement on the record of his statement that it had been read over to him and it stated to be correct. Immediately after the summary of his statement had been read to the witnesses the petitioner was called upon to cross-examine him. He began to

may cross-examine the first witness, but objection was taken by the second respondent, who was presenting over the enquiry to the questions which he put on the ground that they were leading questions. The record of the proceedings of the enquiry is not before us and we do not know that was in fact the nature of the questions put by the petitioner but after he had indicated to cross-examine the first witness, he made the following application to the second respondent:

“Sir,

At the stage of proceedings when Mr. Paras, P. W. 1 is being examined and I am allowed to cross-examine her, I put certain questions to her to elucidate the facts but neither the questions nor their answers were recorded by your Honour. I feel that I am not being given the full opportunity to cross-examine the witness. Moreover the preliminary enquiries were done by your Honour and the proceedings are also being conducted by your Honour. So I request that the proceedings should be stopped here and they should be conducted by some other officer of the same rank in order to reach the facts of the case.”

On this application the second respondent made the following order:

(A) No leading questions to be allowed

(B) This is an absurd demand and there is no provision for examining it in the Police Regulations.

Order amended to § 1 who will sign in token of acquiesce. No witnesses before will be permitted.

The petitioner made an attempt to cross-examine any of the remaining witness witnesses who were then produced.



The proceedings were continued the following morning when four further witnesses for the petitioner were examined and it appears cross-examined by the petitioner. A charge was then framed against the petitioner and further proceedings were adjourned to the 21st July when the petitioner was required to file a written statement and produce his defence witnesses. The second respondent refused to summon two of the witnesses whom the petitioner desired to examine but no complaint is made on that score nor is any comment made of the fact that the petitioner and one constable, who was alleged also to have been concerned in the act of extortion, were tried jointly.

The three principal objections urged by learned counsel to the enquiry against the petitioner were that he had no sufficient warning that an enquiry was about to be held, that he had no adequate opportunity of cross-examining the witnesses and that under section 15 of the Police Act a charge against a police officer can only be originated into by an officer having managerial powers.

We have considered the somewhat meagre evidence before us with much care. The conclusion to which I have reluctantly come is that the petitioner did not have the opportunity which he ought to have been afforded of defending himself against the very serious charge which had been made against him. In arriving at that conclusion I feel bound in the absence of any denial by the respondents to accept the petitioner's version of what occurred as substantially correct, and I assume from the fact that the record of the enquiry has not been placed before us that there is nothing therein which would seem to be wrong at a decision.

It appears clear that the petitioner had no adequate warning that proceedings against him under section 7

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THE  
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of the Police Act were about to be taken. The witness respondent's notice relying upon him as a witness in explanation is dated the 17th July but it was served upon the petitioner only within about an hour of the commencement of the proceedings. The petitioner insists that only a summary of the deposition of each witness was furnished to that witness and that it nothing in the evidence before us to show that the petitioner was supplied with a copy of the depositions. The learned Reading Circuit has very properly not attempted to support the order of the second respondent that leading questions could not be put in cross-examination. But he has argued that the petitioner could probably have carefully cross-examined the witnesses without putting any leading questions to them. It is possible that he might have done so had he been skilled in the art of cross-examination. But even a skilled cross-examiner would be deprived of his most useful weapon if as a depend of the right to put leading questions.

It appears to me that the fact that the petitioner had no adequate warning that an enquiry was about to be held against him coupled with the fact that he was required to cross-examine the witnesses on the basis of a summary of their depositions and that he was not allowed to put leading questions to the witnesses, placed him in a very difficult position. It is certainly desirable that departmental enquiries should be conducted with out any unnecessary delay, but the person whose conduct is being enquired into must be given a reasonable opportunity of defending himself not merely by calling defence witnesses but by testing the value of the prosecution evidence by cross-examination. I find it difficult in this case to reach the conclusion that the petitioner did not have a fair hearing and that the conduct of the enquiry may have proceeded on the assumption that the petitioner was guilty and could have no answer

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to the charge. Upon the whole I have come to the conclusion that the petition should be allowed on these grounds, and it is therefore unnecessary for me to consider the further objection that the charge against a police officer can only be supported once in an office before another officer.

I would therefore direct the issue of a writ in the nature of certiorari quashing the order of the Deputy Inspector General of Police dated the 17th October 1961 and of the Inspector General of Police dated the 24th June 1962.

The manuscript is accepted as the author's final version.

3480. J. —While agreeing with the order proposed by my brother Abraham, I would like to point out a feature of the one which in arriving at my conclusion I have not overlooked. I may say that I consider it unnecessary to state the facts which have given rise to this application as that risk has been done by my brother Abraham. I still therefore go straight to the points on which I wish to draw special attention.

Section 7 of the Police Act (Act V of 1861) authorizes the Inspector General, Assistant Inspector General and District Superintendents of Police under such rules as may be framed by the Local Government to dismiss, suspend or reduce any police officer whom they shall think remains negligent in the discharge of his duty or unfit for the same. Paragraphs 498 and 499 of the Police Regulations published under the authority of the United Provinces Government (as it then used to be called) lay down the procedure which must be followed in order to establish a charge under the provision of the Act mentioned there. It arrives at the conclusion that the act of the wood chark, as mentioned in paragraph 5 is an intentional delinquency. One of its elements consisting in, to judge, to force or hold in its power, no person. It would then appear

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to be smaller than the expression found in 1943 (ibid). It is required a less degree of positive action, that these words as regards the fact as necessary in dispute. I am mentioning this in order to indicate that I am not basing my conclusions on this one or the other of the words found in the text given to the witness concerned in arriving at their decision by this Court.

The process, however, in which they must have been indicated by the Regulations and it is because I find that no essential process by which they are required to arrive at their thought has been disregarded that I have come reluctantly to the conclusion that action, not in this case by means of a writ of *habeas corpus* quashing an order of the Deputy Inspector General of Police dated the 12th October 1981 and of the Inspector General of Police dated the 9th June 1982 is called for. To state this plainly clear I would arrive upon me to rule 1 under paragraph 100 of the Police Regulations which is to the following effect:

1. As much evidence must first be placed on record as the Superintendent of Police considers necessary to establish a charge under section 7 of the Police Act. This evidence may be either oral or documentary, and must be material to the charge if oral:-

(a) it must be direct, i.e. if it is fact which could be seen or otherwise perceived it must be the evidence of the person who saw or otherwise perceived it;

(b) it must be recorded by the Superintendent of Police himself in the presence of the officer charged who must be allowed to cross-examine the witnesses provided that the statements recorded by a Magistrate or a qualified police officer in the course of a pro-

interviewing officers into the conduct of the officer charged will be admissible and need not be repeated again if

(1) they were originally recorded in the presence of the officer charged and an opportunity was given to him to cross examine the witnesses or if

(2) though not originally recorded in his presence they are later by a qualified police officer read out to and admitted by the witnesses in the presence of the officer charged and the officer charged is telling that this should be so read out instead of being repeated again, and the officer charged is then given an opportunity to cross examine the witnesses."

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Now while it was no doubt for the Superintendent of Police to decide how much evidence was necessary to establish the charge it was also essential for him to allow a cross examination of the witnesses produced. Sect. 343 of the Indian Evidence Act lays down that leading questions may be asked in cross examination. The reason why leading questions are allowed to be put to an adverse witness in cross examination is that the purpose of a cross-examination being to test the accuracy, credibility and general value of the evidence given and to ask the facts already stated by the witness in some cases becomes necessary, for a party to put leading questions in order to elicit facts in support of his case even though the facts so elicited may be entirely unconnected with facts testified to in an examination in chief. "You as has been pointed out by my brother MASTERS, after the prisoners had been examined the first witness, an application was made to the court requesting permission to ask direct questions put to the Prison and then

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answers had not been reached by him. On this application the second respondent also, made the very general and wholly wrong order that no leading questions shall be allowed. I think the order passed by the second respondent betrays an ignorance of the principles on which a cross-examination should be allowed to be conducted. It is not suggested that it was not open to the officer conducting the inquiry to decide, in particular questions when that question is competent, irrelevant or confusing. But a general order even giving the right of the petitioner to put any leading question at all runs on a completely different footing. The questions disallowed are not before us and it is impossible for us to say what their exact nature was or would have been had they been allowed to be put. But it does strike me that the order was of a such as to keep the character and content to be parallel required here, not to the best, meaning to be stretched to the word "cross-examination." I am therefore not in a position to say that the petitioner was not handicapped by the general order allowing a complete restriction on the matter in which his cross-examination was to be conducted. For this reason I have been driven to the conclusion that it is essential in the interests of justice to interfere in this case. It may well be that the petitioner was abusing his right of a cross-examination but there is no material which would justify us in holding that this was the case. The technician was under a statutory obligation to give to the applicant an opportunity to cross-examine the witnesses and I cannot escape the feeling that a strict test was not taken of the right of a person charged with an offence under section 7 to be heard in cross-examination.

On this ground I have come to the reluctant conclusion that important to the discipline of the Police Force

is and desirable as it is for the Court not to interfere lightly with orders of disciplinary action against police officers: there is no escaping the position that the jurisdiction adopted in dealing with all leading questions in cross-examination was such as could prejudice a fair hearing of the case against the prisoner. The case therefore is one which calls for intervention by the Court, and I agree with my brother MORTIMER that it was should have quashed the order of the Deputy Inspector General of Police dated the 15th October 1951 and of the Inspector General of Police dated the 4th June 1952.

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*Before His Justice Spero and Mr Justice Chaberski*

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## THE U P MEDICAL COUNCIL, LUCKNOW

(OFFICIAL PARTY)

United Provinces Medical Act, 1923, s. 12.—*Grant of—Med. and  
graduate, subsequent—Medical Council, power of to  
graduate—Registration—Name, death of the register of  
names to name*

There is no provision in s. 12 of the Medical Act which enables the Medical Council to remove the name of a person simply because he has been struck off the register of graduates of the body which originally granted the degree.



*Environ Monit Assess* (2015) 189:1–12  
DOI 10.1007/s10661-015-4700-0

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\* *See also* [category:books](#) [category:books:philosophy](#) [category:books:philosophy:ethics](#)

A. P. Boudry and A. P. J. van der Pijl

The Japanese Council of Corporate Directors has the honor to inform you that

\*This publication and the Editors will not be held responsible for

Years ago — This application has been presented under Article 101 of the German laws to the Court by Dr. D. V. Karmarsch, Medical Officer of Government Tuberculosis Clinic at Wiesbaden, the various efforts and steps particularly for a series of physicians investigating the epidemic form. From taking the steps and not training his group from the negative of Medical Officers of the Tubercle.

The hon. member gave me the application and he stated shortly Dr. Kumbhar had his education at the Gurukul Kangri University in Haridwar. He had a bright career at that institution which is one of the best well known private institutions in the country. For various reasons it was the policy of this State then not to have affiliated itself to any university or incorporated as a university, by an Act of the Legislature. It has since, as has been specified to be maintenance of reference, an important part in the cultural and national life of that country. He graduated himself in medicine from the Gurukul Kangri University in 1929 and was able to obtain a first class degree. That degree is a well known one recognised as a qualification for registration as medical practitioner. The medical degree at Gurukul is called *Aparajita Akshaya*. Mr. A. P. Pandey has caused our attention to the issue of such prescribed for this degree and has also placed before us certain question papers set for the B. A. degree in 1934.



graduates in the medical degree at the University. Summative by direction of committee have been placed before us in the effect that the standard of education in modern medicine of the General Kangri University is of a fairly good standard. On this part of the case we may refer to the testimony of a physician of international reputation Dr. R. N. Chopra. He is an M.D., Sc.D. (Graz) and an F.R.C.P. (London). He is a physician of the highest standard and in the affidavit which he has sworn he states that he believes, and does fully believe, that the General Kangri University has a well integrated course in both systems of medicine, Indian and Scientific, without supplanting the latter.

Another physician, Dr. Karl Wiedman, who also holds good qualifications, says that the standard of education in modern medicine of the students of the General Kangri University is of fairly good quality.

As to the quality of the education Dr. Walter Renden has also tried as objective in the effect that the British Medical Association of the College in modern medicine can be compared with those of other medical colleges in India. He also states that ample opportunities are provided for practical training in various laboratories and there is enough scope for teaching both side medicine. Besides the Hospital has a large number of outdoor patients.

We have referred to the statement in the form of affidavits of these well known persons in order to indicate that the General Medical Degree is not a degree in what may be called pure Ayurveda. Along with instruction in various systems of pharmacopoeia, instruction in modern system of medicine is also required. Whether the standard reached by the General Kangri University is equivalent to that of Indian universities conferring medical degree is a question which is not relevant for our purposes. The bearing of them

with  
Dr. N.  
Chopra  
Dr.  
Karl W.  
Wiedman  
Dr. Walter  
Renden



From these facts the Registrar shows the inference that a graduate of the General Medical College gets a proper education in pre-medical, basic, medical and professional medical subjects in the more modern way. We do not think it necessary to record any conclusion on the question whether the standard reached by the General Medical University, as its medical examinations are as high as those of the universities created by the Acts of the same Legislature in India. We are unable, however, that it would be incorrect to describe the General Medical University as one which imparts education only in an absolute indigenous system. On the question of the efficiency in education imparted by the General Medical University, opinions may well differ. But as to the fact that along with instruction in ancient system of pharmacopoeia instruction in modern system of medicine is imparted there can be no doubt whatever. We have let it members on us to make these clear, because we find that in a letter which was written to the Medical Council by the Royal University of Rome, an assertion was made that Dr. Keshab had misrepresented to them the real nature of the education that he had received in General. That education was described as being an education in the old Ayurvedic system (obscure religious system) and not in modern scientific system as is being imparted in advanced medical colleges in India.

We have read that Dr. Karaman graduated in 1928 from the Girardin Kanto University. Between 1928 and 1930 he worked in an eye hospital in Bombay and acquired practical experience for a period of about three years. In 1931 he retired to Baku, Iran and built up a good reputation in that city. In 1935 he decided to leave for Europe having secured a scholarship for that purpose. He decided that he would have his education in Italy and went to that country, armed with

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letter from Professor Bruno Kewenau, School of Biology, Institute of Zoology, Cologne. Dr. Sartorius gave him a letter addressed to the Professor, Formbach. The President of the Royal Academy of Italy. In this letter Dr. Sartorius mentioned Dr. Kewenau as a doctor who had studied medicine and old systems of medicine in the private educational institutions, the Germanic Kewenau University, a Hochschule in the United Provinces. He then noted also that it was known to him that this was one of the leading national universities in Italy and enjoyed high esteem among the nationalists. This letter then noted also Dr. Kewenau had graduated from there in 1908 and ever since had been doing some research work. This letter also stated that at that time he was practicing medicine in Naples, Italy. A reference is made in this letter to the fact that one Dr. Sartorius had been given certain assignments by the University of Munich in Germany for his doctorate in medicine. In his opinion Dr. Kewenau's qualifications were not inferior to those of Dr. Sartorius. In view of that fact he hoped that there would be no difficulty in his admission and that he would be allowed to take his doctorate examinations from the University of Rome. There was no exception a brilliant student like him in this country as he was graduate of a national university. Dr. Sartorius added that he (Prof. Formbach) knew very well the prevailing conditions in this country. On receiving his letter of introduction Prof. Formbach gave a letter of introduction to Dr. Spang, Administrator, Director of the University, asking him to obtain for Dr. Kewenau the facility he was asking for and added that he would be much displeased if he found up with too many difficulties there, proceeds to Munich, where they had made golden bridges for his admission. On the strength of his qualifications as the perhaps of the recommendations which he had brought with him, the

Lecturer of Roentgen in Dr. Kautzman as a replacement of 4 years. The M.D. of Rome is a six years course but he was allowed to take it in one and a half year. He had however no degree in five aged examinations and he got through them creditably. In his four examinations he was able to secure distinction and in fact his marks were in the average 88 per cent mark. Finally, the University of Rome conferred upon him the degree of Doctor of Medicine and Surgery. His degree qualified him for practice outside Italy. At the time that he went to Italy, this country was run as was with it. An Italian doctor used to be recognized for purposes of a registration of medical practitioners. In 1899 she was broke out and he continued to study in Italy and Germany. From 1900 to 1902 he studied medicine and surgery in the University of Munich, passed all the examinations comprising twelve subjects and got an M.D. with distinction. From 1902 to 1907 he worked as Lecturer and was in charge M.D. of Chem division ward of the University Hospital. Later in this country he was taken as a post graduate in the town of Heidelberg. He was also appointed Doctor in charge for civil personnel in the American Air Field. Finally when political conditions were favourable for his return, Dr. Krausman came back to this country in 1914. Even before leaving Berlin he took the precaution of writing a letter to the Chief Minister of Uttar Pradesh mentioning to him the retention of return and giving him a synopsis of his qualifications. A short time after his return in 1917 he was an adviser to the Public Service Commission of U. P. for the post of the Medical Superintendent Bhawalpur Sampradaya, Karnal Tal. He applied was interviewed by the Public Service Commission and finally selected by that Commission. On the 1st March 1918 Dr. Kautzman took charge of the District Hospital. It may be mentioned that he was

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registered as a medical practitioner by the Medical Council under section 15 of the U. P. Medical Act, 1907. On the 19th December 1940 he was entitled to be so registered as he had a degree of the University of Rome which was within the meaning of the Indian Medical Act & Royal University of Italy. No objection of any character was made at that time to his registration. It may be mentioned that there was a perfect dedication on Dr. Kumbhar's part of all the requisite means for registration. He gave the Medical Council to understand that he had his preparatory medical education in Calcutta; that after Calcutta he proceeded for a number of years at Bombay and Delhi. That and that he was able to obtain an M. D. degree of the Royal University of Rome. The Medical Council took every relevant fact as its possession came to the conclusion that he was entitled to registration and he was so registered.

Suddenly some thing happened which made the Medical Council change its mind. On the 19th April 1941 the Registrar of the Medical Council wrote to the applicant & then asking him to answer three questions. These questions were—

(1) When did you leave India for foreign countries?

(2) The qualifications with dates which you received in India before going abroad. Please state also the names of the institutions where you studied?

(3) The qualifications with dates which you received outside India and the period of studies and the name of the institutions which you attended in obtaining these qualifications?

He replied on the letter in August and sent along with it his certificates as required.

The Medical Council, however, chose to take steps which we think, were of no ill-effect. Hence The Registrar of the Medical Council wrote to the Rector of the Royal University of Rome that Dr. Kariakou had made incorrect and false representations. He further added that the training he had received was in a university not recognised by the Government of India but was in the old Ayurvedic system (distinct indigenous system) and not in modern scientific system as was being imparted in recognised medical colleges in India. The letter went on to suggest that they did not seem to be fully aware of the fact that Dr. Kariakou was trained in the Ayurvedic system in a private college and an existing medical university. The Registrar further added that he required the information as objections had been raised to his registration with the Council on the ground of insufficient training. Replies were sent on the 26th December 1948, 1st January 1949 and 22nd January 1949 on behalf of the Medical Council to the University of Rome requesting them to expedite a reply to their communication dated the 26th November 1948. On the 22nd January 1949 the Rector of the Roman University wrote to the Registrar Medical Council that Dr. Kariakou had applied to be admitted in the next year course of medicine and surgery on presentation of the following documents:

(1) High School Certificate from the residential University of Genoa at Genoa dated the 24th April 1924.

(2) Diploma Certificate with examinations and marks obtained at the Faculty of Medicine at the same University signed by Vice-Chancellor, Rector and Vice-Chancellor Vice-Chancellor.

The Council was at first disposed only to give him credit for four complete years as some of the subjects required

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to the  
Registrar  
of the  
Medical  
Council  
Rome  
dated  
26th  
November  
1948





to realize that the American system had fallen one day, we said that the General College University was not legally recognized by the Government of India. There is towards the end of the letter a request that it is desirable that all possible information should be sent regarding the organization of university education conducted in India. Now Dr Verha's letter had made it clear that Dr Kaulbach was an authority on American cases. There was no awareness in the letters which were sent by the Chancellor and the Vice Rector of the University of Göttingen. It is true that Göttingen is not a recognized university in the sense that it puts its diploma in no Act of Legislature. It is, however, a well-recognized institution whose good work has been highly praised by scholars and educationalists of overseas. It is well known that it concerned an experiment along new lines in education. Its reluctance to accept official help was due to the nature of the Government that was operating in this country before 1947. Göttingen was not an obscure institution. It could be charged with well-known instances such as the Shani Mahalan of Rabindra Nath Tagore. The standard reached by the medical colleges at that University may or may not have been comparable with that reached by the students of medical universities of Indian Universities but it would be a misnomer to describe the courses of study at Göttingen Medical Faculty as purely or even mainly confined to indigenous medicine. We have referred on the point to the eminent authorities of Dr Chopin. We may say the Mr. Rastan MacDonald who was at one time the Prime Minister of England wrote in 1914 about Göttingen in the following terms:

The *Qiyas* is the most prominent thing in Indian education that has been done since Muslim is set down to put his opinion into writing in 1948.

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We may also remind that the President of our Republic Dr. Rajendra Prasad spoke about Gurukul in the following terms:

The primary Government is Gurukul's own and the Government also considers the Gurukul as its own, hence the Gurukul should have a part of the Government educational system. But at the same time I believe that in the making of every country, independent educational institutions have a place of their own. It is such institutions that can bring about a revolution in education. Therefore if the Gurukul Kangri would desire to preserve its independent character the Government shall have no objection. The Government shall give it all kinds of help, not prompted by the feeling of unreserved grant of money but with the Gurukul Kangri on behalf of the Government of India.

We may also make attention to the observations of the Education Commission which was presented over by Dr. Radha Krishna Rao Vice-President of the Indian Republic:

Gurukul Kangri: The institution with its branches has about 1,000 students of whom 100 are of the College grade. Vedic studies, Ayurvedic research and advanced work in ancient Indian Literature and History have been its specialties. Non-recognition of its degrees and diplomas had had much in the way of its popularity, but now after half a century of unceasing work, it is being recognised as a real centre of learning.

We have mentioned all this in order to indicate unambiguously that Dr. Keshabdas did not receive his medical education in India in an unknown and obscure institution but in a well recognised institution which did not however for reasons which it is unnecessary

in order, receipt or desire to receive Governmental aid. Subsequent to this letter the Medical Council sent for Dr. Kerasiotes on 15th March 1949. He was asked to answer certain questions. He wanted to place certain documents before the President, but the latter did not consider it necessary to give him time for that purpose. On the basis of that interview, the Council wrote to the Rector of the Royal University of Rome pointing out that the University of Rome had given Dr. Kerasiotes exemption of nearly 40 years on an incorrect information. The Council further found that Dr. Kerasiotes had not pursued a regular course of studies in any recognized medical college before proceeding to Italy and obtained exemption by supplying incorrect information. They pointed out that even though Dr. Kerasiotes had not passed a college examination which would be regarded as good for purposes of registration in Italy, he could proceed in this country to the degree which he possessed was a respectable degree. They felt that this was not in a position to cause his name from their register and they revoked the certificate of the University of Rome for that purpose. If the University of Rome could cancel the M.D. Degree awarded to him on the ground that he had, by supplying incorrect information, obtained exemption, it would be easy for them to erase his name from the Medical Register.

We are surprised that a responsible body created by the legislature for the maintenance of professional standards should have acted in this irresponsible manner without giving any adequate opportunity to Dr. Kerasiotes to explain his case. Without caring to ascertain in an unbiased manner the case which Dr. Kerasiotes had to put up, this arbitrary body chose to write to the University of Rome and urge one of its rectors to suggest that action should be taken against him for

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Memorandum  
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To: Dr. P.  
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the cancellation of the degree for which he had worked and ended here in Rome. Referring to the act of 1910 there were the opinions of domestic physicians and educational authorities which have to be taken into account. We can well understand Dr. Korshak's expressing regret that this body will do when this case comes up before it for consideration. This aspect of the matter cannot be ignored by us. For nearly nine months the Medical Council received no reply from the University of Rome. On the 29th March, 1931 the President of the University of Rome wrote to the President of the Medical Council informing them that the degree which had been conferred on Dr. Korshak had no guarantee of ever being cancelled. This ended the chapter on the degree of M.D. is concerned. We understand that Dr. Korshak had made an appeal to the Rector of the University of Rome against the order of the University authorities cancelling the degree and that this appeal is still pending before the Rector.

In connection with the case, the Medical Council on receiving the information that the M.D. degree had been taken from Dr. Korshak, notified the authorities of Government to the effect that Dr. Korshak was not a qualified medical practitioner and was to them suggesting that he should be removed from government service. In their letter of 16th January, 1930 to the Secretary of Government U. P. Medical (H) Department London, the line taken was that the admission of Dr. Korshak to the final year of M.D. class of the University of Rome was obtained by contriving to direct to him and that Dr. Korshak had not obtained a regular and proper training in basic medical subjects and had not been suitably trained. In their opinion, therefore, he was not a fit person to remain in government service as a junior member of the staff of Military Sanatorium. The Medical Council was directed to

Consequently, to get into touch with Dr. Knechtel and give him the opportunity to explain the case which had been referred to the Council, I never was accordingly addressed by the Medical Council and he was required to send his reply within ten days. Thereafter there followed a long correspondence with Dr. Knechtel and the Medical Council into which it is unnecessary to enter. But we must however make a pointed reference to the letter dated the 20th April 1951 in which Dr. Knechtel asked the Registrar of the Medical Council to be good enough to send to him the correspondence that had taken place between the University of Rome and the Medical Council. The Registrar (Medical Council) on the 14th May 1951 and the correspondence ending on the 10th of the 21st March 1952, sent to Dr. Knechtel. The precise point is that Dr. Knechtel has been asked to show cause as to why his name should not be erased from the Medical Register since his M.D. (Rome) degree has been cancelled by the Rome University and he no longer holds the medical qualification necessary for registration under the U. K. Medical Act. A letter to this effect was sent on the 17th April, 1951 and it was followed by letters dated the 5th, 17th and 22nd November and 14th December, 1951. It is against this threatened action that Dr. Knechtel has come up to this Court under his writ jurisdiction.

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We have already pointed out that there are good reasons why Dr. Knechtel apprehends that he will not get a fair and impartial hearing before the Medical Council. It is in the opinion and on the initiative of the Medical Council that his M.D. degree was cancelled by the University of Rome. We can well understand therefore his hesitation in appearing before a body which he has reason to apprehend is not likely to adopt a fair and impartial attitude towards the case put forward by him. Apart from this the question of

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has acted in this case requires some consideration. The question is whether the Medical Council has the power to cancel a registration on any ground other than that mentioned in section 23 of the U. P. Medical Act. It is contended by the learned Standing Counsel that the only section under which action can be taken against him is section 23 of the U. P. Medical Act. Section 24 of the Act can have no application to the facts of Dr. Koushan's case as it is limited as regards influence conduct in his professional respect. There is no question of influence conduct in the present case; the project is for Dr. Koushan to be removed because 23 of the Act runs as follows:

Any action in the respect of medical practitioners in which is proved to the satisfaction of the Council to have been fraudulently or incorrectly made may be annulled under an order in writing of the Council after notice has been given to the person concerned and his objections if any have been considered.

It is only in circumstances in which an action has been made fraudulently or incorrectly that the Medical Council can take action against any registered medical practitioner under section 23. No doubt the intention that is required is of the Council. But it is also true that the fraud or mistake has reference to the time when the medical entry was made.

On this part of the case, we may refer to the case of *Dr. Peter Forde* (1). That was a case of a person who obtained a diploma as licentiate in Dental Surgery from the Royal College of Surgeons, Dublin, in 1878 and whose name was subsequently entered in respect of that qualification in the General Register kept in accordance with the provisions of the Dentists Act, 1878.



**Abstract**

in the course of appeal and he may appear in the case whenever the records of Lord Brough 3d B.

It seems to me that these provisions go to show that the power of election by the Council is in the nature of a political power, and must be subject to the manner and which they are authorized to require for the purpose of exercising such power. It may be that the local or more learned Medical authorities may make a man off whom require for a branch of an undertaking in which he charged his qualification. The Dentists register is a novel innovation, the essence of the Act of 1878, and it seems to me that there can be no possible distinction with the register in created except those which are given by the law.

**Lesson 1: I am more specific. The story of**

The effect of our decision is that it will not be a compromise for the General Council, without depriving that jurisdiction under article 15 (section 1), corresponds with articles 25 and 26 of the Medical Act and simply because a licentiate of a local medical authority has been struck off the register of that authority, to erase his name from the Deutscher Register. Section 13 authorizes the Council to erase the names of convicted persons and those guilty of infamous or disgraceful conduct as a professional respect. There is no provision which enables the Council to remove the name of a person once on the register simply because he has been struck off the register of licentiate of the body which originally licensed him.

Now, obviously, there is no question here of influence or disqualifying conflict in a professional respect so far as Dr. Konstant is concerned. We may point out that in the case of Abrams v. General Council of Medical





THE  
HON'BLE  
JUDGE  
OF THE  
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IN  
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leave, we think that that is a proper case in which a writ of prohibition should issue restraining the Council from proceeding further with any steps to cause the name of Dr. Bernstein to be registered as Medical Practitioner, and we order accordingly. The powers now assumed on this issue are hereby qualified. It is unnecessary to give any orders with regard to the other reliefs claimed by the applicant as our order in regard to prohibition will enable the applicant to get the substance of the reliefs that he claims. The applicant will be awarded his costs which we assess at Rs 300.

Order accordingly.

### CRIMINAL MISCELLANEOUS

Before Mr. Justice Dyal and Mr. Justice Chittarwan.

DWARA PRASAD AGARWAL.

1894  
March 31

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KRISHNA CHANDRA SHARMA AND OTHERS

**Contempt of Courts Act, 1883.**—*Contempt case during recess—Case not sent for inquiry or trial as a Magistrate's case.—Contempt proceedings of case not started for publication law of press or articles.—Proceedings which are summary.—Application of Contempt of Courts Act if possible in each case in India.*

Contempt proceedings cannot be taken in connection with a publication of news or articles so long as it remains true in having the spirit of contemptuous and has not actually come to a Magistrate's court for inquiry or trial.

Extending the rule for punishment of contempt of court to cases which are only summary matters, harmony with the freedom of speech of citizens and a law passed in the last session is shown in this country.

CASES: Miscellaneous No. 85 of 1912

The facts appear in the judgment

P. C. Chatterjee, for the applicant

Huei Lai Capton, for the State and S. N. Duttal and

S. N. Baidya, for the opposite parties

The judgment of the Court was delivered by—

CHATTERJEE, J. —This is an application filed by Dinku Prasad Agarwal for relief consisting primarily in the alleged contempt of court and to have been committed by the opposite parties. In the application the alleged contempts are said to have been committed on three occasions. The first was an article published in a daily newspaper known as Jyoti, on the 6th of June 1912. The second act of contempt was committed on the 8th of June 1912 when opposite party, no. 2 through Huei Lai along with certain other persons sent a resolution passed by the Cuj Congress Committee to the District Magistrate and to the Superintendent of Police. The third contempt was said to have been committed on the 8th of June 1912 when the opposite parties nos. 1 and 2 are said to have organized a public meeting at which speeches were delivered. The writing and the printing of the article as well as the passing of the resolution and sending it to the District Magistrate and the Superintendent of Police are not denied on behalf of the opposite parties, but the delivering of speeches at a public meeting on the 8th of June 1912 has not been admitted and the learned counsel for the applicant volunteers his complaint with respect to this third act. He has confined his case to the first two acts of alleged contempt.

An incident happened on the 8th of June 1912 at the shop of one Jagdish Prasad Sharma at Mandi Chandi, Banar. Two reports of the incident were

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 Ram Swarup  
 were  
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lodged in the police station. One by Saran Singh a servant of Jagdish Prasad and the other by Dwarika Prasad applicants. A viewing of these two photographs shows that there was a quarrel at the shop of Jagdish Prasad and simple citizens were also caught but the versions of the two informants are mutually different. As a consequence of the reports Jagdish Prasad applicant was arrested by the police on the 2nd of June 1952 but was released on bail the same day. On the 3rd of June one Saran Narayan alias Sarhan was arrested and was released on bail on the 4th of June 1952. On the 4th of June 1952 Ram Swarup presented himself in court and was released on bail the same day. Saran Narayan and Ram Swarup are connected with Dwarika Prasad. On the 11th of June 1952 Dwarika Prasad filed a complaint concerning this incident before a magistrate and the police sent a charge sheet against Dwarika Prasad, Saran Narayan and Ram Swarup on the 4th of July, 1952 charging the three persons of having committed offences under sections 129, 135 and 422, I P C.

From the narrative of facts given above it would appear that the two alleged acts of contempt or publishing the article and sending a resolution concerning this incident were committed on the 10th of June and 3rd of June 1952, respectively. Then were these committed after the incident and also after Dwarika Prasad and Saran Narayan had been arrested and released on bail and also after Ram Swarup had been released on bail, but before either Dwarika Prasad filed the complaint at the police sent up the charge sheet prosecuting Dwarika Prasad and others. The first question therefore, that arises in the case is whether contempt proceedings can be taken in respect of offensive articles or resolutions etc. before the institution of any proceeding actually

in court. The correctness of the learned counsel for the Appellant on this point, we say. The first complaint that affords a defendant a valid ground to challenge even if certain proceedings in court are manifestly wrong, the law is actually stated and secondly, that proceedings in criminal courts are to be set aside on the basis that the accused are brought before the Magistrate, and are granted bail or remanded to custody. There we discharge the two questions that we have to consider in regard to the preliminary issue.

It is scarcely desirable that people do not publish or raise to the wider propaganda concerning events which are likely to be sub judice at the same time regard must be had for the liberty of speech of the courts. Our Constitution guarantees to the courts liberty of speech with certain safeguards including a safeguard against concerning contempt of court. On the one hand as much above as is desirable that the parties or their friends do not indulge in any pro propaganda but the difficulty is to what length a court of law should go in stopping this type of propaganda. Should all speeches concerning a particular incident be prohibited as soon as the incident has occurred or the prohibition should be imposed at some later stage but before the matter has come to court? In the present case we have to consider whether the publishing of an article in a cognisable case in which the police are proceeding with the matter is a contempt or not before the police stand up the charge sheet. It very often happens that even in cognisable cases the police make errors and mistakes in-cognisable for months but afterwards they drop the proceedings when they find that there is not sufficient evidence to go to court, or the allegations of the complainant are incorrect.

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**  
 6. **References**

In this connection we propose to consider certain provisions of the Criminal Procedure Code, which lay down the procedure to be followed by the investigating authorities before actually sending up the case to the court for trial. Section 156 Criminal Procedure Code, 1973, directs that an officer in charge of a police station may, without the order of a Magistrate investigating any cognizable case. Under section 157, he is directed to investigate two facts where he has reason to suspect the commission of a cognizable offence though no report has been made to him about the occurrence. Under section 158 Cr. P. C. an investigating officer is authorized to require the attendance of all witnesses before him for orders in writing, and under section 161 examine such witnesses. Section 163 Cr. P. C. gives power to an officer in charge of a police station to make search under certain circumstances and under section 167, he is directed to forward the accused and the copy of the entries in the diary of the case to the nearest Magistrate. Under section 169 if it appears to the officer that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall if such person is in custody release him or, he is detaining a bond to appear before a Magistrate if and when so required. Under section 170 the officer is directed to send the record if it comes to the Magistrate directed to try the accused if the officer finds that there is sufficient evidence against the accused or there are reasonable grounds of suspicion to continue investigation. Section 175 directs an officer in charge of the police station to forward a report to the Magistrate concerning every investigation made by him giving in detail the names of the parties, the names of the witnesses, and stating whether the accused has been released on bail or

the "Lower" sub-section (3) of the section, the Magistrate is authorized to pass such orders for the discharge of the said bonds on delivery, in case the accused has been released on bail.

As these cases show the powers of the investigating officers contained upon him by various sections of the Code of Criminal Procedure. We might also mention here, the powers of a Magistrate before he takes cognizance of a case. Section 131 authorizes the magistrate to direct investigation by the police even on a non-cognizable case and sub-section (3) empowers the Magistrate to direct an investigating officer to cause a case to be investigated. Under section 137 the officer in charge of a police station is directed to send the report on a Magistrate having jurisdiction to take cognizance of the offence where the officer suspects the commission of a cognizable offence. Where a cognizable case has not been investigated into because it is not a bailable offence or because there was not sufficient ground for entering it as investigation, the reasons for dropping the investigation have to be mentioned in the report sent to the Magistrate under section 137. Section 139 empowers the Magistrate to direct an investigation into a matter which the police officer proposes to drop and for which he has sent in his report. Where an investigation has not been completed within twenty-four hours and the police officer wants more time to investigate into the matter, he may request for prolonging that the continuance of investigation is well founded, the police officer is to send a copy of the case diary and the reasons to the nearest Magistrate and the Magistrate may, with the sanction of the Sessions for a term not exceeding fifteen days. But the Magistrate is to send a copy of his order to the District Magistrate or the Sub-Divisional Magistrate concerned the revision.

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for his further detention. The law already stated defines the functions of the magistrate of the police officer should the case is sufficient evidence against the accused the accused if in custody shall be forwarded to the Magistrate authorized to take cognizance of the offence. Section 178 (a), 179 of the Code appear to refer to the forwarding stage of cognizance by an officer in charge of the police station. Section 178 refers only to those cases where a report is made to the officer that there is sufficient evidence against the accused on a reasonable ground of suspicion to justify the forwarding of the accused to the Magistrate whereas section 179 appears to refer to all investigations irrespective of the fact whether there is sufficient evidence on reasonable ground of suspicion to justify the forwarding of the accused to the Magistrate or not. It may be noticed that under both these sections the accused is to be sent to the Magistrate empowered to take cognizance of the offence whereas under section 187 the accused is forwarded to the nearest Magistrate.

A review of the powers of the investigating officer as well as the Magistrate shows that the Magistrate is not only a court but also a person in charge of the administration of the district or the local area and he is to be kept informed of all investigations being made by the police officers under his jurisdiction. He has further the right to direct further investigation may be made cognizable or non-cognizable and the police officer is to act according to the directions given by the Magistrate. The same Magistrate who has directed the investigation and has been informed of its results is called upon to try the case himself. In the area of affairs a confusion arises as to when a Magistrate is acting as the Executive Officer in charge of the administration of a district or a local area and when he acts as a court and



NO. 14, 20. Admissions and Office. The learned counsel for the appellants has argued that whatever the nature of the evidence in a Magistrate or papers are sent in for recording, a case may not be proved by a Magistrate must be taken to be an order passed by a competent court. But we find ourselves unable to agree with this view as such, because we find from the different provisions of the Code of Criminal Procedure from where from the Magistrate has actually been given power to direct or to disprove, and also to accept or not to accept a report of a police officer dropping the proceedings, report a particular accused. It is quite obvious that in no one place is mentioned the stage or proceeding before the case is taken to the court, and the argument of the learned counsel would lead to the result that the court is required to pass orders even before a case has been brought before it. The learned counsel for the appellants contends that as soon as a person had been arrested or a result of a report made against him, the case starts and no more published with respect to that incident must be taken to have been published during the pendency of proceedings in a court of law. In support of his contention, the learned counsel has cited a number of cases of English courts, but before proceeding to consider those cases it would be better to briefly mention the salient points of criminal procedure obtaining in England, as the procedure obtaining there is different in several particulars from the procedure obtaining in this country. The first step in the ordinary course of criminal procedure in England is to bring a person charged with a crime before a justice or justices of the peace in order that the charge may be investigated. This attendance is termed *arraign*, he answers or he tries under a warrant or otherwise. Summons, not warrants of arrest are issued by a justice or two justices after being held before him. (Fitz. Blackburn, 1. Laws of

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English Statutes Volume 3 paragraph 121, Such information is sufficient if it contains a statement of the specific offence with which the accused is charged together with such particulars as may be necessary for giving reasonable information as to the nature of the charge. A statute cannot cover unless there is an intention of creating and on such. A statement may be based on an oral and various information.

Criminal proceedings except where there are circumstances in the contrary may be commenced at any time after the commission of the offence. A prosecution is commenced when an indictment is laid before a justice or the accused is brought before him to answer the charge or when an indictment is preferred (para. paragraph 120).

It would thus appear that a prosecution commences in England as soon as an indictment has been laid before a justice or the accused has been brought to answer the charge or, if there is no preliminary examination before the justice when an indictment is preferred. The case cited by the learned counsel are even where an indictment was laid on oath before a justice and a warrant was issued on the basis of such information. It is quite obvious that in such a case according to the English procedure a prosecution is started immediately. But it may be noted that in cases where there is no preliminary examination before a justice a prosecution only starts when an indictment has been preferred. Justice of the peace as in England either in form of summary prosecution or by indictment requires when a person is charged with an indictable offence. Thus clearly not in cases of law and when holding a preliminary inquiry was an indictable offence are punishable in the same position as a Magistrate in fact holding an inquiry was a case trouble in





magnates, and farmers were seated surrounding the trial of Harvey Crippen. Crippen was seated some three yards outside Quebec. While Crippen was still detained in Quebec and his case had not been disposed of by the Judge who was to act under the Fugitive Offenders Act the newspaper published an offensive article. While dealing with this point the learned Judge remarked:

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No case has been cited to us which says that where the person has been arrested and is in custody, upon a warrant proceedings are not pending against him. The warrant has been declared by my brother A. T. Lumberton in a case before the Divisional Court, which has been mentioned by my brother Fennell to be of itself a judicial act and we are asked to say what after the magistrate has performed a judicial act upon sworn information laid before him there are no proceedings against the accused person. In my opinion it would be greatly to narrow the jurisdiction of this court to lay down any such rule as that.

The decision of this case was based on the practice in England of lodging information on oath before the issue of a warrant by a Magistrate and the act of the Magistrate in issuing the warrant has been held to be a judicial act for itself. After this procedure had been followed it was held that the proceedings, in the case had been started. Under the Code of Criminal Procedure there is no such lodging of information on oath and in the initial stage before the case has come to court the Magistrate is authorized to supercede even the information. Under section 147 Cr. P. C. he issues a warrant on a police report and, in our opinion, while issuing such a warrant, the Magistrate does not act in a quasi-judicial or an officer superior to the officer.

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conduct of the proceedings. The investigating police officer has also an authority to arrest persons without a warrant and also to release persons on bond and the Magistrate has made been given wider powers. The jury system in England being different from that in India, we find ourselves unable to follow the necessary in the designated English case, and to hold that proceedings in connection with such a warrant has been found to be valid in this.

The next case referred to is one reported in *Reid v. The State*, 111. In this case one Edgar Williams had been arrested upon a charge of shooting a police officer and had been brought before the justice upon the charge. But before these proceedings had been completed the articles in question had been published giving photographs of the accused person. It was held that the publishing of photographs was likely to prejudice the accused in his identification by the witnesses and was so much contempt of court as the publication of an article giving the facts of the case. In the course of the judgment Hon'ble Chief Justice Leno said as follows:

We are not called upon to consider the question whether there may be contempt of court where proceedings are commenced but have not yet been launched. In the present case the question did not arise for there was a charge and there had been an arrest and proceedings therefore had begun. Hence this first question may have to be decided.

The above passage will show that it was taken for granted that in the case this proceedings had actually begun and

our commands with respect to the case are the same as  
only respect to the case of Box 1. (Circle 11.)

The new case cited is *Rev. v. Dawson*.<sup>11</sup> This case merely lays down that a criminal conviction is not final until the time has expired within which notice of appeal to the Court of Criminal Appeal may be given, so that the effect of such notice being given until the appeal has been heard and determined. This case does not touch the point arising before us and cited up by the respondent as authority.

The next case came to the case of Indian courts cited before us. The first case cited is the one reported in re Subramanyam (2 B) (3). This is a Full Bench case and a number of authorities are considered but proceedings for contempt were dropped and the appeal was dismissed on the ground that the contempt was merely a technical one and not a substantial one and also on the further ground that the proceedings before the court were not important to the knowledge of the public and publication at the time when the article was published. His Hon'ble Chief Justice Munster and his Justice Mirza refused to state of the English cases cited above and were inclined to take the view that it was not necessary in a case of a criminal trial for a publication to be shown as contempt of court; that the accused should first have been committed for trial or even for him to have been brought before a Magistrate provided that he has been arrested and was in custody. The learned judges actually disposed the case on different points and then accepted the decisions of the English courts without considering the question as to whether the procedure provided in the Criminal Procedure Code is the same as the procedure obtaining in England. The bench simply made out comments on

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the incident could not be made the subject of contempt of court proceedings provided the editor had neither knowledge nor reasonable grounds for believing that proceedings were about to be launched in respect of the incident. In the course of the judgment RAYMOND, J. remarked:

As a general rule it may be laid down the course of the officers in this class of cases is that proceedings should be pending when the offending publication appears but the question is, to what stage and up to what stage a proceeding will be deemed to be pending for the purposes of this rule has been the subject-matter of considerable discussion.

After this the learned Judge considered the English decisions mentioned above and also most of the Indian decisions directly mentioned by us. In the end he was of the opinion that it was not necessary that the accused should be committed for trial or have been brought before the Magistrate and it would be sufficient if he had been arrested and was in custody. Further on the learned Judge remarks that it was not shown that the opposite parties knew or had reason to believe that the proceeding was about to start in connection with the said incident. The other learned Judge, RAYMOND, J. also considered the English cases but he did not clearly express his view of his own. After summarizing the facts of the English cases the learned Judge has simply stated that in none of those cases the knowledge of the proceedings and the knowledge that they were imminent was therefore clear and the imminence was of a very certain character. The third learned Judge, AGGAR, J. simply said that in the circumstances in which the article appeared it had been published in good faith and the rule should be discharged. The order which

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their Lordships actually present could have been passed assuming that the decisions of the English courts laying down when a proceeding should be taken to have some limited law applicable to proceedings in India also. One of the learned judges considered it necessary to say that the proceedings in one of the English cases were summary and the summary was of a very certain character, the third learned judge did not express any opinion on this point.

We have considered above all the cases cited by the learned counsel for the applicant, and, as stated above, in none of these cases the position of a Magistrate during the course of the investigation proceedings was considered, nor did the decision of any of the Indian cases depended on a decision of the point which we are called upon to decide in this case. As stated above, we are of the opinion that contempt proceedings cannot be taken in connection with the publication of news or articles so long as a criminal case is during the course of investigation and has not actually come to the Magistrate's court for enquiry or trial. We agree in this conclusion with certain observations made by Mr Justice Hewart in *Gang v. Nestle* (1). The learned judge observed:

I think that the sentence from which the prisoner seeks relief was more than an abuse of words. I think it should be held wholly void. I think on the first point that there was no matter pending before the court in the sense that it must be so made that kind of contempt possible. It is not enough that somebody may hereafter move to have something done. There was nothing then moving forward when the prisoner's letter was published.

(1) 11 L.J. 24, 25, 26.

The case used above also arose out of copyright proceedings though the actual point that arose in the case was different.

The Hon'ble the Supreme Court of India has laid down in *R. R. Chatterjee v. The State of Uttar Pradesh* (1) that a Magistrate takes cognizance when the police have completed their investigation and come to the Magistrate for the issue of a process. It has further laid down that when the Magistrate applies his mind for the purpose of ordering investigation under section 156(2) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of the offence. In this case, the above observations were made in connection with the question as to whether the sanction is granted, the applicant had been obtained before the Magistrate took cognizance of the case or it was subsequently obtained and the argument on behalf of the applicant was that the Magistrate took cognizance as soon as the Magistrate issued a warrant for his arrest. The learned Judge repelled this plea and held that a Magistrate does not take cognizance of a case simply because he has issued a warrant of arrest. We are further of the opinion that a case does not come to court by the issue of such process, and the publication of an article concerning the incident before the case has come on the file of a Magistrate as a court, does not amount to contempt of court.

We might now consider the question as to whether the publication of an article would amount to an attempt when the intention of proceedings is innocent and the publisher has knowledge that they are so innocent. Excepting the observations in some of the Indian cases cited above, none of the English cases

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have laid down that the publication would amount to contempt if the prosecution was successful.

In the case of *Rea v. Daily Mirror* (1), cited above, Lord Chief Justice Hewart observed as follows:

We are not called upon to consider the question whether there may be contempt of court when proceedings are imminent but have not yet been launched. In the present case the question did not arise, for there was a charge and there had been an arrest and proceedings therefore had begun. Some day that question may have to be decided.

After the case no case has been brought to our notice in which the question has been decided by a English court. But in one of the Indian cases reported in *Talwar v. Gossamer, Reserve Bank* (2), it was remarked that comment on a case which is about to come before the court with knowledge of the fact is just as much a contempt as comment on a case already launched. This case arose out of the publication of a letter in the *Madras Mail* during the course of the pending, at Hyderabad proceedings for the winding up of the Travancore National and Quilon Bank Limited. The application for winding up was presented on the 12th of June 1918, and the letter was published on the 12th of July 1918. The petitioner's complaint in the case was that the letter in question constituted contempt of court inasmuch as it expressed an opinion that the winding up petition should be granted and it was held that there was much force in this contention. There was a scheme of proceedings under consideration at the time though the scheme was actually put up before the



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was not, in fact, the charge sheet to be submitted to court. An arrest in England might necessarily mean the institution of criminal proceedings subsequently, but it is not so in our country. The extending of the power of arrest for contempt to cases which are only preliminary in our opinion, is not justified on the circumstances of the case in this country. We therefore, come to the conclusion that the preliminary objections should pass and no proceedings for contempt can be taken against the opposite parties as the alleged case was committed before *Divan-e-Fasad* & complaint had been filed and long before the charge sheet had been submitted by the police to the Magistrate.

We consider it desirable to discuss the other point also as to whether the article dated the 6th of June published in Japan and the resolution dated the 6th of June 1932 sent to the District Magistrate and the Superintention of Police contained matters tending to interfere with the proper administration of justice and would have been punishable as contempt of the Magistrate before whom the cases are pending in case they had been published after the cases had come to court. In our opinion both the article and the resolution contained improper matter and would have merited punishment for contempt of court. The article relates the incident giving the version of the opposite parties to the true facts of the case and tries really to exaggerate it much beyond the allegations made in the police report by *Suman Singh*. In this article it is said that 12 or 13 men, attacked the shop of a businessman, destroyed the goods removed cash from cash-box, turned out the shop-keeper and his servants from the shop and beat them mercilessly before hundreds of people. It is then said that the shop-keeper had given prior intimation to the police of the apprehended

finger, but the police took no action and the persons against whom the complaint was made had commenced similar activities even before. Then it says that a few people and women could, after organizing themselves, disturb the peace and administration of the city. The report made to the police by Jagan Singh only speaks of the beating of his master and of humili and of the picking of the cash box which resulted in the denial of some small change and some more. We do not want to go into any further detail because the case is sub judice. We have mentioned the contents of the article and the police report to show that the article did tend to pervert the case against the applicant and it very much exaggerated the offence and purported to support the version of the opposite parties. The resolution also purports to give the version of the opposite parties as the true facts of the occurrence and has tried to exaggerate the case. It also tended to interfere with the proper administration of justice and to pervert the substance and course. In our opinion the opposite parties would have been liable to punish them for contempt of court as soon the article had been published and the resolution had been passed after the institution of criminal proceedings in court. But as they were of a prior date, they do not amount to contempt of any court. In this connection we might also consider the question whether the prosecution of the applicant on the date of the article and the resolution was ~~unlawful~~ and the opposite parties knew that it was so ~~unlawful~~. As stated above the police went up the charge sheet on the 14th of July, 1952 nearly four weeks after the date of the article and the resolution. The affidavit filed by the applicant does not disclose any facts which would show that the prosecution of the applicant and his continuance was ~~unlawful~~ on the 14th

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statement on the 15th and 16th June, 1932 or the opposite parties knew that it was untrue. In my opinion the applicant has failed to prove that the suspension of any proceedings concerning that incident was announced on the dates when the article was published or the resolution was passed. Nor could the opposite parties be said to have the knowledge on those dates that the proceedings were announced. We, accordingly, dismiss this application but taking into consideration all the facts of the case we think the parties should bear their own costs.

The learned counsel for the applicant has prayed for leave to appeal to the Hon'ble the Supreme Court. The question of law decided by us is one of general and public importance but we have also held on facts that it has not been proved that any proceedings were announced on the relevant dates, or that the opposite parties knew that any proceedings in court were announced on those dates. We, therefore, refuse to grant the leave prayed for.

*Application dismissed.*

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## CIVIL MISCELLANEOUS

*Before Mr. Justice Dwyer and Mr. Justice Mahony.*

**THE J. K. IRON AND STEEL CO. LIMITED**  
(Applicants)

**v.**

**1924**  
**April 5**

**THE LABOUR APPELLATE TRIBUNAL OF**  
**INDIA, AND OTHERS (Respondents).**

*Constitution of India, art. 116—Writ of Certiorari—Failure to the part of applicants to urge grounds of challenge not before other Tribunal—Writ, whether should be issued—G. O. no. 416(LA) N.P.W.—P.L.I. 11 of 14—Expiry of forty days period for giving an award by an arbitrator at any other extended period—Governor if should extend the period.*

A writ of certiorari, which is in the discretion of the High Court to issue under Article 116 of the Constitution, shall not be ordinarily issued in cases where an applicant failed to urge the grounds on which he desired the writ of certiorari before other Tribunal where he could have properly urged them, unless he could show that he was unaware of them when the writ was taken from other Tribunal.

Under clause 14 of G. O. no. 416(LA) N.P.W.—P.L.I. 11 dated March 12 1924 the Governor is here to make an order extending the period for the making of an award by an arbitrator when after the expiry of forty days or any extended period.

*One law document.*

*Civil Miscellaneous No. 247 of 1924.*

*The facts appear in the judgments.*

**G. S. Pathak and P. S. Pathak, for the applicants.**

**v. C. Khosla, for the opposite parties.**

*The judgments of the Court was delivered by—*

DEPTA, J. —This is an application under Article 226 of the Constitution for the issue of a writ in the nature of certiorari to quash the order dated the 1st November, 1951, and the order dated the 24th July, 1952 of the Labour Appellate Tribunal.

The petitioner is the J. K. Iron and Steel Co. Ltd. having its registered office at Kurela Tower, Kanpur. It dispensed with the services of 125 workmen on the 18th May 1951 and served on them a notice to this effect:

Consequent to transfer of the Rolling Mill to Calcutta and want of work for some department in full the services of the persons as per list attached are dispensed with from today. Their wages and other dues in full settlement will be paid after 1 pm.

This dismissal of the workmen was challenged on their behalf by the Secretary Iron and Steel Works Union Kanpur.

On the 26th June 1951 the Governor in exercise of the powers conferred by sections 3, 4 and 9 of the U. P. Industrial Disputes Act 1947 (U. P. Act no. 28 of 1947, and in pursuance of the provisions of clause 10 of G. O. no. 315(LL)/XVIII—7(41) of dated the 15th March, 1951, subsequently to be referred to as the Order, referred the industrial dispute between the petitioner firm and its workmen, to Mr. J. N. Singh Additional Regional Conciliation Officer Kanpur for adjudication. The matter in dispute was expressed thus in G. O. no. 3633(TD)/XVIII—28(TD)11, dated the 28th June 1951:

Whether the retrenchment of the workmen group in the Amerson by Messrs. J. K. Iron and Steel Co. Ltd. Kanpur, is justified? If so, to what relief are the workmen entitled?

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For P. K.  
Iron and  
Steel Co. Ltd.  
Kurela Tower  
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For J. N. Singh  
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clause 16 is an *in rem* general term. It does not limit the power of the Governor to refer the *matrimonium* within the period so he intended, but empowers him to extend the period from time to time. In the absence of any such limitation, we are not prepared to narrow down the interpretation of this provision and to hold that the Governor must exercise his power of extending the period before its expiry.

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Such an order of extension merely postpones the extended period for the period of 40 days in the main instance of the dispute. It has nothing to do with the right of the adjudicator to adjudicate on the matter referred to him. There is nothing in the order with respect to the denial of his right to adjudicate. There is nothing in clause 16 or in any other clause of the Order which provides that the right of the adjudicator to make an award will cease after the expiry of 40 days. In the absence of any such expression with respect to the cessation of the adjudicator's power or right to decide the dispute, it appears to us that it would be wrong to say that the adjudicator ceases to be an adjudicator or that his right to adjudicate ceases. Clause 16 of the Order empowers the Governor to refer any unresolved dispute to an adjudicator for decision. The referring order dated the 29th June mentions that it is made in pursuance of the provisions of clause 16 of the Order. The adjudicator derives his right to adjudicate on the dispute referred to him from the referring order made in pursuance of the power conferred on the Governor under clause 16 of the Order. He does not derive his power to adjudicate upon the dispute under any provision of clause 16 of the Order. The provisions of clause 16 comply itself with procedural matters and provide for the adjudicator's hearing the dispute and pronouncing his decision within a certain period which in every case is to be at least of 40 days as mentioned in the clause.





submitted by the Government and that so long as he cannot reach the reference the Government can make an order granting the period of discussion and then making him co-operate, to make the award. No rational objection therefore can be taken to the advantages a nation that would rather pay such extended periods.

Section 504 of the Code of Civil Procedure (Art. XIV of 1882) provided for the court, referring a matter to an arbitrator, and expensed as being such time as it thought reasonable for the delivery of the award and for specifying such time as the order. Section 514 reinforced the court, in certain circumstances, either to grant further time, and from time to time to enlarge the period for the delivery of the award, or make an order, regarding the arbitrators. Section 515 provided that no award would be valid unless made within the period allowed by the court.

In the case of *Reynolds v. United States*, 98 U.S. 145 (1878), the order relating to the matter to the arbitrators did not specify the period within which the award was to be made, but fixed a date for the disposal of the case which required the arbitrators to be made before that date. The award was not made within this time. The court, however, considered the period for the delivery of the award as merely fixing such order of execution must run beyond the expiry of the period fixed under the award was, however, made on a date beyond the last date of the period fixed by the last order of execution. The award was not void on that of the provisions of section 42. Their Lordships of the Judicial Committee of the Privy Council observed at page 391:

Others, once the award was made and delivered, the balance of the court under section 214 was spent.



Section 35 of the Common Law Procedure Act, 1854, (17 and 18 Vict. c. 125) reads:

The reference being under any such document as comparative order of reference is allowed an order may order referring the record back shall make his record under his hand and (unless such document or order respectively shall contain a different term of time) within three months after he shall have been appointed and shall have entered upon the reference or shall have been called upon to act by a notice so issuing from any party but the parties may by consent so issuing enlarge the time for making the record, and it shall be lawful for the superior court of which such reference, document or order is or may be made a rule of the court or for any judge thereof, for good cause to be stated in the rule or order for enlargement from time to time to enlarge the term for making the record.

It was held that the judge had power to enlarge the term after the record had been made and that the effect of the enlargement was the same as if it had been made by consent of the parties, for no case was laid down previously where the reference without enlargement and that the record was therefore valid. Justice Brainerd observed at page 489:

I am therefore clearly of opinion that the section gives power to the judge to enlarge the term for making the record at any time and under any circumstances in which he thinks there is good cause for his enlargement (of course he would not grant an order if he saw that injustice might be done thereby) and the effect of the enlargement is the same as if it had been by the parties or

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the period during which the witnesses could give the word, the provisions of law allowing the court to enlarge the time for the delivery of the word were construed in that manner. It is true that the provisions could enlarge the period during which the witnesses had to give the word, but that consideration could not have been of any importance if the provisions enlarging the time to extend the time could not be legitimately interpreted to mean that the order extending the time could be made even after the expiry of the period. It is only when the provisions to be interpreted are capable of more than one meaning that their true meaning is determined with reference to other sources having a bearing on the point. Mr. Parkes also submits that the court under sections 568 and 514 of the Code of Civil Procedure of 1902 had the power to fix the actual period for the delivery of the word and had the power to enlarge the period and that therefore the provisions empowering the court to extend the time could be interpreted differently from the provisions empowering the State Government to extend the time fixed in clause 16 of the contract for the delivery of the word by the arbitrator. We do not see any good reason for this construction affecting the interpretation of clause 16 which in clause 16 says— "The State Government to extend the period from time to time."

The case reported in *Business & Manufacturing Co. v. G. and W. Jones* (1) in which the Supreme Court held that the assignee became trustee after the expiry of the time refused in the assignment making no distinction that the debt had been specified in the order of reference and no circumstances where there was no provision in the Act or in the order not for under its provisions about extending the period.

[illegible]





*The  
Taxpayers  
v. The  
Commissioner  
of  
Internal  
Revenue,  
No. 93-1000,  
1994-1  
CA-9*

the time to enable him to make the certificate and presented that, in default of the Taxing Master's making of the certificate within such time that order would be of no effect. The Taxing Master's right to proceed with the matter after a month was questioned. *Prima facie*, observed as page 481

I think that the force of the words in that order is to be of no effect. destroys the proceeding altogether. that there is no longer a proceeding under which the taxation can take place and that the power to enlarge the time is intent to be proven to enlarge the time while there is a pending matter. But for the final words in that order is to be of no effect. I think the order would be a substantive order and the time could be extended.

These observations on our mind, do not support the contention for the petitioners. There is nothing in the provisions of the Order to the effect that the reference to an adjournment order para 14 would be of no effect if the respondents did not make his second motion the period of forty days specified in para 14. When the judgments of *Barra J* were on appeal it was reversed on the ground that sub-rule 57 of rule 57 of Order LXX authorized the Taxing Master to extend the time even after the expiry of the time fixed in that order. This sub rule reads

The Taxing Officer shall have power to limit or extend the time for any proceeding before him and where by any general order or any order of the Court or a Judge a time is appointed for any proceeding before or by a Taxing Officer unless the Court or Judge shall otherwise direct such officer shall have power from time to time to extend the time appointed upon such terms of cost as the justice of the case may require and although the



application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate in order to discontinue action against the use, service, company

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**  
 6. **References**

Received 10 July 2002; accepted 10 July 2002

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Then it is said that under the new terms of the order it seems to have any effect after the expiration of the appointed time. The condition not having been made within the month and there being no expiration of time within the month it is said that the order was dead and could not be revived. In my opinion that is not the right view so far as this order. I do not think that it was dead in that sense. It is more like a case of suspended animation and I may be permitted to say so. In my opinion the power to expedite the case on this order means power to extend it according to the rules—that is, according to schedule B.

so, by proceedings pending with the adjudicator after the expiry of the period of forty days and till the order evacuating the award is made.

It follows that the cases relied on by Mr. Pothol are distinguishable and not quite apposite to the present case. The cases relied upon on behalf of the opposite party, are more in point and support the view we have expressed earlier to the effect that the Government is free to make the order extending the period for the making of the award even after the expiry of the period of forty days in any extended period and that therefore the appellations had jurisdiction to make the award as set out in the 16 November 1954.

A pertinent objection was raised by Mr. Allen at the conclusion of the arguments of Mr. Parke that in view of the failure of the prosecution to make an

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objection before the Appellate Tribunal with respect to the adjunction of having no production to act as an adjunction after the 14th August 1951 they should not be granted a writ of certiorari. Reliance was placed on the cases of *Lalchharam Chatur v. Commissioner of Corporation of Madras* (1) and *Re v. Williams* (2). These cases support his contention. In *Re v. Williams* (2) a writ of certiorari was refused on the ground that the applicant failed to raise any objection to the production of the case before the hearing before that court.

*CROWTHER, J.* said at page 413

No objection was taken to the production of the case before the hearing before that court, that being so it is the rule of that Court not to grant a writ of certiorari except upon an affidavit which requires knowledge on the part of the applicant when he was before the court below of the facts on which he bases his objection.

He further observed at page 414

A party may by his conduct preclude himself from claiming the writ as *relitigant* partner. He must show whether the proceedings which he seeks to quash are void or voidable. If they are void it is true that no mistake of his will vitiates them, but such considerations do not affect the principles on which the Court acts in granting or refusing the writ of certiorari.

In *Lalchharam Chatur v. Commissioner of Corporation of Madras* (1) it was observed at page 414

The point taken by Mr. Krishnaswami Aiyangar is that failure to object to the production of

the Court whose order is sought, so he qualified only defects the applicant when the objection is one involving the misapprehension of facts which were in, should have been within the knowledge of the applicant when he was before the lower court, and does not apply, to a misstatement of law. We see no warrant in the order for drawing any such distinction because in our opinion the test that they lay down is whether the applicant raised with a point either of law or of fact which would oust the jurisdiction of the lower court has elected to argue the case on its merits before this Court. If so he has submitted himself to a jurisdiction which he cannot be allowed afterwards to seek to repudiate. We are of opinion that the applicant has so conducted himself as to preclude the Court from exercising a discretionary jurisdiction in his favour.

Mr. Patrick argues that the right of an aggrieved person, to a writ of certiorari is lost only when he fails to bring in the record of the court below facts on the basis of which its general jurisdiction to deal with that matter would cease and will not be lost in cases in which the facts were well known and the question of jurisdiction was purely a question of law: the principle behind this view being that in view of the importance of the aggrieved party to the proceedings in the court below the discretion of issuing a writ of certiorari should not be exercised in his favour. The case of *Lakshminarayanan Chettiar v. Commissioner of Corporation of Madras* (1) does not drive this distinction and clearly lays down that failure to raise a point of law or of fact affecting the jurisdiction of the court below will preclude the aggrieved party from claiming a writ of certiorari as a matter of right. Mr. Patrick relies on paragraph 1128

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case that point of jurisdiction before the adjudicator. We do not find any support for this contention that the knowledge of the facts by the other party or by the adjudicator would be of any help to the proponent. They lose a certain right on account of their failure. It is their conduct which has to be looked into and not the conduct of the other parties concerned in the matter. The case of *Lodge v. Dick* (2) simply lays down that a defendant may be barred by his own conduct from objecting to irregularities in the institution of a suit in a court which was competent to entertain that suit if any such irregularities had been committed and that when the judge has no inherent jurisdiction over the subject-matter of the dispute the parties can sue by their mutual consent convert it into a proper judicial process, although they may constrain the judge thus created and be bound by his decision on the merits when they are submitted to him. We have already pointed out that the adjudicator in the present case had jurisdiction over the dispute and that what it laid down here does not in any way go against what has been held in the case of *Lalchurnam Chaitan v. Government of Corporation of Madras* (3). The case of *Muralidhar Nandan v. Subramaniam Sanyal* (4), is also not of much help as it only held that the High Court in that case was inherently incompetent to hear the appeal which had been preferred to it against a certain decision of the District Judge under the Pagoda Act. Mr. Pathak also referred to the case of *Rao v. West Suffolk Compensation Authority* (5) where certain conditions of the applicants for a sum of money was not held to be such as to disentitle them to the relief. That case does not in any way throw doubt on what has been held in *Rao v. Williams* (6).

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(3) AIR 1954 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 5

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In view of the above, we are of opinion that the writ of certiorari, which is in the discretion of the Court as now under Article 25 of the Constitution, should not be issued ordinarily in cases where the applicant had failed to urge the grounds on which he claimed a writ of certiorari before the other Tribunals where he could have properly urged the grounds, unless he could show that he was unaware of those grounds when the writ was before the other Tribunals.

The second point urged by Mr. Pothol, for the petitioners, was that the arbitrator and the Appellate Tribunal exceeded their jurisdiction in deciding that the order terminating the employment of the witnesses' company was unjustified on account of the employees not taking action under Standing Order 18(c). It is urged that they had much to see whether the interests of the witnesses vested in the employees by Standing Order 18(c) had been properly reviewed; that it had been increased in the interest of the industry and had not been exercised arbitrarily male fide or with a view to victimizing certain workmen. We do not find any restriction on the powers of the arbitrator and the Tribunal with respect to the matters they have to take into consideration in coming to a conclusion on the point of dispute referred to the arbitrator. The issue referred to the arbitrator was simply whether the dismissal of the workman was or was not justified and if it was justified on what relief they were entitled. The arbitrator held that there was shortage of scrap iron, that the complaint that the shortage was deliberate and management created was not correct; that the shortage of scrap iron was of a temporary nature and would probably last for about eight or nine months; that he was not convinced that the management had any male fide intention; that there

These facts were clear and that he could not hold that the reinstatement was in all instances by any harassment or discrimination on the part of the management. He, however, was of opinion that the employer company should offer the option of employment to these workmen in their new setup in Calcutta and that the reinstatement workmen should be kept on the roll of the factory from domestic effect with continuing of service and they should be played-off in accordance with trade reasons. The Appellate Tribunal agreed with the respondent's opinion except with respect to the Standing Order in accordance with which the reinstated workmen were to be played-off. Standing Order 15(a) contemplates what the company is to do in the event of a fire, earthquake, breakdown of machinery or stoppage of the power supply or some other cause beyond the control of the company and allows the company to stop any machine or department for any period without notice and without compensation in lieu of notice. Standing Order 15(a) allows the company, in the event of shortage of orders or for any other trade reasons, to stop any machine or machines or departments for a period, not exceeding 12 days (including statutory holidays) in any one calendar month, without notice and without compensation in lieu of notice. The Standing Order 15(a) allows the company to terminate the employment of any permanent employee by giving 14 days notice or by payment of 12 days wages in lieu of notice, and requires the termination of service to be recorded in writing and communicated to the employee if he is absent at the time of discharge. It is contended by Mr. Pathak that the petitioner company exercised its discretion given to it under Standing Order 15(a) in spite of its discretion to play off for trade purposes under Standing Order 15(a) and that the Tribunal had no jurisdiction to correct this right exercised bona fide.

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As already mentioned, we do not find anything in the U. P. Industrial Disputes Act or in the Order, or in the particular order of reference to the adjudicator, which restricts the power of the adjudicator with respect to the matters he has to take into consideration in coming to the conclusion whether the retrenchment of the workmen was justified. He was free to take into consideration all such matters as could have a bearing on the question, and one such matter would have been to see whether it was absolutely necessary to retrench the workmen. The standing orders did contemplate the contingency of trade reasons requiring the stopping of any machine or machines or department or departments for certain periods, and provided in heading Order 16(a) that in such contingency the company may stop any machine, etc. for a period not exceeding 12 days in the aggregate. This implies, in our mind, that so long as it is possible for the company to pay off, for trade purposes under Standing Order 16(a), it should not take the extreme step of dispensing with the services of its employees. We are of opinion that this consideration is very relevant to the consideration of the point which had been referred to the adjudicator, and that it cannot be said that the adjudicator or the Appellate Tribunal exceeded their jurisdiction in deciding the dispute referred to the adjudicator and which came up in appeal before the Appellate Tribunal. We may refer to the case of *Miner State v. C. P. Jewell* (7). It was observed at page 84

But the adjudication by the Tribunal is only an alternative form of settlement of the disputes on a fair and just basis, having regard to the prevailing conditions in the industry and as far as possible analogous to what an arbitrator has to do in





## J. V. L. BURGESS AND OTHERS

Before Mr. Justice Macdonnell and Mr. Justice Giesbeek

RAJESH K. SHARMA, *Editor*

THE STATE OF UTTAR PRADESH AND OTHERS  
(FORWARD PARTIES)

Consolidation of India, Act 125—Dates reported on the form or record—Place Court of case subject of

The High Court in the manner of its procedure under Article 191 of the Constitution has exempted an error which is apparent on the face of the record and which goes to the root of jurisdiction.

*Forfeiture, Public v. Roman and Roman Ltd. (1) A v. Northumberland Compensation Appeal Tribunal. In part. May (2) referred to.*

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The data appear in the following

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The Funding Council (Local) Administrator, for the opposite parties.

Moore, J. This is a petition under Article 22 of the Constitution in which the petitioner prays, first for the issue of a writ of *habeas corpus* to quash two orders of the Regional Transport Authority, Meerut dated respectively, the 21st July and the 3rd November, 1951, and an order of the State Transport Tribunal, dated the 6th August, 1952 and secondly, for a writ of mandamus to issue to the State Transport Authority, Lucknow to

couple) is to accept the replacement of one motor vehicle by another.

The petitioner is engaged in the business of plying stage carriages, and he has been doing so since the year 1949. The facts upon which the petitioner relies are set out in the affidavits which accompany his petition and it is of importance to observe that no counter-affidavits have been filed. He states that in September, 1948, the Provincial Transport Authority was prepared to sanction the issue to him of a temporary permit, but as the petitioner had sold the vehicle which previously he had owned and was not possessed of sufficient money to purchase a new vehicle, he approached a financier named Chatter Sen for financial assistance. On the 22nd September, Chatter Sen purchased a stage carriage for the sum of Rs 18,500, and on the 25th October—beyond counsel was agreed that the date 19th September in paragraphs 9, 10 and 11 of the affidavits should be the 25th October—he sold the vehicle to the petitioner, and in a form of receipt for the possession of Chatter Sen, the petitioner asserted on that date four documents, namely:

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Rajmohan  
Biswas.  
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Mukund  
Prasad  
Biswas.  
—  
Nandlal J

(i) An agreement wherein, after stating that he had sold the stage carriage to Chatter Sen for Rs 18,500 the petitioner undertook to be responsible for such application and affidavit as may be required to complete the transfer, and Chatter Sen undertook to pay such taxes on the vehicle as might become due.

(ii) A letter addressed to the Regional Transport Officer, Murar, stating that the stage carriage had been sold to Chatter Sen.

(iii) A power-of-attorney in favour of Mahan Choud, the son of Chatter Sen, authorising him to draw petrol for the vehicle, to deposit the road taxes, renew the permit, and to file applications

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 Juan Carlos  
 Chatterón  
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 signed in  
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 the court  
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 March 10, 1954

and affidavits on behalf of the petitioner in connection with the vehicle and

(iv) a form of document intended to serve as evidence and be of use when needed, acknowledging that he had sold the vehicle and the petrol thereon, to Chatterón for the Rs 10,000 and had received the amount.

The petitioner says that when he executed these documents on the 25th October the documents were not dated and blanks were left to be filled in when the registration number of the vehicle and the number of the petrol were known. No date has been inserted in the letter to the Regional Transport Officer. The 6th November 1949 was subsequently inserted as the date of execution of the agreement and the power of attorney and the receipts are now dated the 25th November 1949. The petitioner says that these documents were executed by Chatterón. The petitioner further states in paragraph 7 of his affidavit that various documents had been executed by him as the representative of Chatterón when he had acquired vehicles from the latter in 1943 and 1944, and that after he had paid the purchase price the documents were all returned to him.

On the 25th October—the date on which the petitioner says the above mentioned documents were executed—a temporary permit no. 4234(T) was issued to him and on the 26th November of that year, the vehicle was registered in the petitioner's name and given the registration no. LRE 3347.

In May 1954, the Court in the case of *María del Tránsito de Villar Prados* (1) commented adversely on the practice of the Transport Authorities in issuing only temporary permits and as a consequence of the judgment in that case the Motor Vehicles Department

invited the holders of temporary permits to apply for permanent permits. The petitioner did so and on the 15th September 1930 his application was published in the official Gazette in accordance with the provisions of section 57 of the Motor Vehicles Act. No objection to the application having been lodged the petition was granted a permanent permit on the 15th December 1930. The permit was numbered 135 and was declared to be valid up to the 14th December 1935.

The petitioner says that Chover, Sen then caused crossing trouble and tried hard to stop the petitioner from running the stage carriage on USL 5167 and that as a consequence of this the petitioner applied to the Transport Authorities on the 15th January 1961 to be allowed to replace vehicle no. USL 5167 by another vehicle no. USL 5169. The application was allowed by the Regional Transport Officer subject to conditions laid by the Regional Transport Authorities.

On the 27th January 1961, Chester Sea filed a writ against the petitioner in the court of the Civil Judge, Muzrai, for a declaration that he was the owner of permit no. 113 and he applied for an interim injunction to restrain the respondents from driving vehicle no. L.S.I. 8167.

The court refused to grant an interim injunction and its decision was upheld by the Court on appeal. On the 19th January, Chatter Sen also addressed a letter to the Regional Transport Authority opposing to the petitioner's application for the replacement of one vehicle by another on the ground that he was the sole owner both of vehicle no. UJA. 5147 and of permit no. 148.

On the 21st July 1961 the passenger's permit no 118 was suspended by the Regional Transport Authority, and notice was issued to him to show cause why it should not be cancelled. At the same time the

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1141 Regional Transport Authority, refused to allow the petitioner's application for replacement.

Regional Transport Authority,  
Banda,  
U.P.  
Date of filing  
Petition  
1141

On the 2nd November, 1947 the Regional Transport Authority, Banda, made the following order:

Memorandum

The original permit was on M.L. 43 running vehicle no. 5167. It is established by the deed dated the 8th November 1946 that Babu Ram sold the vehicle and the permit in favour of L. Chander Sen. Chander Sen has all along been in possession of that vehicle and has been running it. Babu Ram could not sell the vehicle and the permit without obtaining the permission of the Regional Transport Authority, Banda, as it is a transfer, and were only left in the deed dated the 8th November 1946. Babu Ram later wrote an application addressed to the Regional Transport Officer that he has sold the vehicle and permit to Chander Sen. Babu Ram is not therefore entitled to retain the permit. The permit no. 121 is a transfer of permit on M.L. 43. Permit no. 121 is cancelled. The question of transfer of permit does not arise as no permission for transfer was taken.

Against that order the petitioner appealed to the State Transport Authority which heard the appeal on the 6th August, 1947. The State Transport Authority had properly cancelled the permit no. 121 under section 48(f) of the Motor Vehicles Act on the ground that the permit was obtained by misrepresentation. It is also held that at the time when the petitioner asked for the replacement he was not in possession of vehicle no. UML 5167 and that therefore, the permit was liable to cancellation under section 48 (c) of that Act. It accordingly dismissed the appeal.

The petitioner contends that at all material times he was in possession of the vehicle and he denies that he obtained the permit, no. 118 by any fraud or misrepresentation. He says that there is no evidence to support any finding to the contrary and that the Court can and should give him the relief which he seeks on the ground that the order is tainted by no error apparent on the face of the record and that it amounts to a violation of the principles of natural justice.

It is common ground that on the 27th October the motor vehicle no. L38L 5047 was sold by Claxton Ltd to the petitioner and that the latter was given possession of it. The petitioner avers that on that day he signed the several documents to which I have referred although the documents were not then dated and blanks were left for the insertion of certain particulars. He also avers that these documents were executed solely for the purpose of affording Claxton Ltd security for the payment by the petitioner of the purchase price of the vehicle. There is as I have said, no counter-affidavit, the only evidence to which the opposite parties can refer in order to disprove the statements made by the petitioner being the documents themselves. But the documents are, in my view, clearly consistent with the petitioner's version of what occurred, and I find it hard to appreciate for what purpose the vehicle was actually sold to the petitioner if on the same day he resold it to his vendor for the same price. Be that as it may the question which is of importance is not the legal title to the vehicle but who was in possession of it, for the right to obtain a permit depends on possession and not ownership. *Frappin Polla v. Roman and Nasser Ltd* (1). Now it is clear that the petitioner was in possession of the vehicle on the 27th October according

112  
 (1) *Frappin Polla v. Roman and Nasser Ltd* (1)  
 [1954] 1 All E.R. 1000 (Q.B.)  
 [1954] 1 All E.R. 1000 (Q.B.)  
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THE  
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a permission issued to them or to its other applicants on the face of the record.

For the reasons I have stated, I am of opinion that the permission is, in this case, entitled to be upheld and I would allow the issue of a writ of certiorari quashing the orders of the Regional Transport Authority, dated the 21st July and the 3rd November 1951 and the order of the State Transport Tribunal, dated the 6th August 1952.

As regards the second of the petitioner's prayers, I do not think it would be proper for the Court to direct the State Transport Tribunal to accept the replacement of vehicle no. USL 3167 by vehicle no. USL 3210 but I think that this Court can properly direct that that tribunal should now proceed to consider the petitioner's application for replacement on its merits. The petitioner is entitled to his costs.

CURRY, J. This is an application under Article 226 of the Constitution or Order 1. The applicant prays that a writ of certiorari or such other writ, order or direction as the Court may deem fit be issued whereby the orders of the Regional Transport Authority dated 21st July, 1951 and 3rd November 1951 as also the orders of the State Transport Authority Tribunal dated 6th August 1952 be quashed. The applicant also prays that a writ of mandamus be issued to the opposite party to:—(a) commanding him to accept the replacement of vehicle no. USL 3167 by no. USL 3210 and (b) allow the applicant to run the same and to secure the permit.

The applicant is an operator who has been ploughing motor wage cartages on permits since the year 1950. In September 1950 the Regional Transport Authority decided to issue temporary permits which the applicant desired to apply for. The applicant was not then possessed of enough money to purchase a wage cartage so unable here to apply and he approached one Late Olupeyemi for financial assistance. On 22nd September

for 1945. Lela Chester Age purchased a stage carriage bearing company Registration no. 176/T from Louis Automobils, Inc. for a sum of \$2,100.00. The aforesaid vehicle was on 27th October, 1949 transferred to the applicant the fact of sale being evident on the present receipt issued by the Indiana authorities to Lela Chester Age.

that  
Lela Chester  
Age  
is  
owner of  
this  
vehicle  
Registration  
no. 176/T

At the same time the applicant to first party and Lela Chester Age as second party entered an agreement wherein the applicant stated that for a consideration of \$2,100.00 the applicant had bought the said stage carriage under a contract to Lela Chester Age. It was agreed in this agreement that the parties would be bound by the terms of the agreement which were also, were that the applicant would have no concern with the persons of the stage carriage or the stage carriage itself and that when an application for transfer was made the applicant would make the necessary affidavit. It was also agreed that Lela Chester Age would in every way be the owner of the stage carriage and that the applicant would have no objection thereto and further, that Lela Chester Age would have the right to sell the said stage carriage.

This agreement was executed according to the applicant on 27th October 1949 the space for filling in the present number has been assigned and the Registration number also when required being left blank. These numbers according to the applicant were either quantity required were filled into the agreement. At the same time according to the applicant an application addressed to the Regional Transport Officer, Milwaukee was also signed by him wherein it was stated that the stage carriage had been sold and that the name of Lela Chester Age should be substituted on the present and the Registration.

1342 A power of attorney was also executed by the applicant  
1343 in favour of Sri. Balkum Chaudh Jena, son of Late  
1344 Chatter Sen, authorizing Balkum Chaudh Jena to draw  
1345 period rates of the suga earnings deposit the real  
1346 estate taxes the permits and licenses of the vehicle, and  
1347 further authorizing him to file applications and affidavits  
1348 on behalf of the applicant in connection with the suga  
1349 earnings.

On the same day the applicant gave a receipt for the  
purchase money received in respect of the sale of the  
suga earnings, including the permits and all rights to  
Late Chatter Sen.

According to the applicant, all these documents were  
executed on the 29th of October, 1949 although the  
receipt and the agreement bear the date 9th November,  
1949 the explanation being that the dates in the latter  
documents were filled in later after the Registration and  
permit numbers had been obtained.

The applicant alleges that all these documents were  
agreed to be returned when the money due in respect of  
the suga earnings, which Late Chatter Sen had purchas-  
ed and had transferred to him was paid to Late Chatter  
Sen and that the documents were merely taken by Late  
Chatter Sen as security and to safeguard his position.

The applicant further alleges that consequent to a  
judgment of the Court, which questioned the legality  
of the grant of temporary permits for suga earnings  
which were regularly operating, applications for the  
issue of permanent permits were called and the appli-  
cant applied for the issue of a permanent permit in place  
of his temporary permit. The application of the appli-  
cant for a permanent permit was published in the U. P.  
Gazette, dated the 28th of September, 1950 for  
any objections under section 27 of the Motor Vehicle  
Act. No objections were however, filed and therefore

on the 11th of December 1942 a permanent permit no. 122 was granted to the applicant, which was to be valid up to the 15th of December 1943. The applicant alleges that thereafter Lutz Distenker, the driver, started causing trouble and tried to inhibit the running of the stage carriage which he had sold to the applicant under a receipt on 25th October 1942 and to the applicant applied on the 15th of January 1944, that there was dispute about this stage carriage no. 122, 1942 and that he should be allowed to replace it by another stage carriage no. UH. 1914. The Regional Transport Officer allowed the replacement subject to confirmation by the Regional Transport Authority.

On the 16th of January 1951, Late Chatter Sen objected to the replacement by an application made to the Regional Transport Authority alleging that he was the full owner of motor carriage no U31 2147 and of permit no 135 and that he had filed a civil suit and had applied for an injunction and that, therefore, further action in replacing the vehicle be stayed pending the orders of the civil court. Late Chatter Sen had filed the suit on the 23rd of January 1951 for a declaration that he was the owner of permit no 135 permit and old no 45MT numbered with motor carriage no U31 2147, with all rights to ply. Late Chatter Sen applied later for an adjournment application on which notice was issued. This adjournment application was, however, not granted and the High Court upheld the order of the civil court.

It is then alleged that the applicant filed a reply to the application of Lala Charan Sen on 15th May, 1953 and he asked that in a civil suit has been filed, the decision of the master by the Regional Transport Authority should remain stayed so that there might not be any loss to him, now Tinkhadi, at the same time. On the

302  
Babu Ram  
Bhalla,  
a  
Driver of  
Orissa  
Motor  
Bike, P

On 1st July 1961, the Regional Transport Authority considered the following order:

Replacement of the vehicle given by Smt. Babu Ram to Regional Transport Authority, in favour of Babu Ram is not confirmed. There is prima facie evidence to show that Babu Ram sold the vehicle and the permit is in favour of Chatter Sen, which he had no right to do without the sanction of the Regional Transport Authority. The vehicle and permit are impounded. Issue notice under section 44 to Babu Ram to show cause why the permit be not cancelled. Transfer application is postponed.

On the 3rd of November 1961 the Regional Transport Authority again considered the matter and passed the following order:

The original permit was no. 45 MT covering vehicle no. 1167. It is established by deed dated 25th November 1948, that Babu Ram sold the vehicle and permit in favour of Late Chatter Sen. Chatter Sen has all along been in possession of that vehicle and has been running it. Babu Ram could not sell the vehicle and the permit without obtaining the permission of the Regional Transport Authority. Bhalla to 62 in number etc. were only left in the deed dated 25th November, 1948. Babu Ram later wrote out an application addressed to the Regional Transport Authority that he has sold the vehicle and permit to Chatter Sen. Babu Ram is not therefore entitled to retain the permit. The permit no. 1167 under successor of permit no. 45 MT. Permit no. 1167 is cancelled. The question of transfer of permit does not arise as no permission for transfer was taken.

From this order an appeal was preferred to the State Transport Authority Tribunal. Which by an order

dated 26th August, 1962, held that there was no ground to interfere with the decision of the Regional Transport Authority.

In this case mentioned under the State Transport Authorities Tribunal appeared to consider that the Regional Transport Authority had cancelled the permit no. 121 under section 60(4) of the Motor Vehicle Act on the ground that the permanent permit was obtained by misrepresentation as the temporary permit had been sold when the permanent permit was applied for. The Tribunal also observed that when the applicant had asked for replacement he was not in possession of the stage-carriage no. 3167 and thus the Regional Transport Authority was entitled to cancel the permit also under section 60 (4) of the said Act.

The order does not appear to determine whether the applicant was in possession of the stage-carriage when he applied for the permanent permit.

Learned counsel for the applicant contends that the permit could not be cancelled either under sub-clause (i) or (ii) of section 60.

So far as section 60, sub-clause (i) is concerned, the submission of learned counsel for the applicant is that the applicant at no time ceased to possess the stage-carriage no. 3167 covered by the permit. He urges that the State Transport Authority in its order, dated the 26th August 1962 has not used the ground on which it came to the conclusion that the applicant was not in possession of the stage-carriage no. 3167 when he applied for replacement. Attention is drawn by learned counsel to paragraph 12 of his present affidavit which runs as follows:

That subsequently Late Chatter Sen Banerjee, learned counsel and used to handle stop the running of the stage-carriage no. 3167, so the

Page  
State Transport  
Tribunal  
Milwaukee  
Journal  
August 26  
1962

1949  
Babu N. Lal  
Advocate,  
Lahore  
Agent of  
Chenar Sen  
Petitioner  
versus  
State of  
Punjab

deponent appeared on the 14th of January 1951, that as there was a duplicate stage carriage no. USL 1167 he be allowed to replace the vehicle by vehicle no. USL 2618 and the Regional Transport Officer was pleased to allow the replacement subject to confirmation by the Regional Transport Authority.

Learned counsel for the applicant says that this paragraph has not been controverted by any evidence that is in behalf of the opposite parties, and so it must be taken that possession of the stage carriage no. USL 1167 was still with him on the date of replacement. He also says that as sub-section (2) of section 80 of the Motor Vehicles Act refers to the permit holder, coming to possess the vehicle during the currency of the permit, the documents which had passed between him and Chamar Sen all being prior to the grant of the permanent permit, there could not establish that the stage carriage no. USL 1167 had ceased to be in his possession after the permanent permit had come into force, but if at all these documents might be used for establishing that he was not in possession of the stage carriage when he applied for the permanent permit.

Learned counsel then points out that no objection whatever was taken, when his application for the grant of a permanent permit was published in the Gazette by the Local Chamar Sen within the specified period, and says that this established that the grant of a permanent permit could not have been opposed on the ground that the applicant was not possessed of the stage carriage no. USL 1167 on the date of his application or was not the owner of the temporary permit to ply it. Learned counsel says that there was no evidence before the Regional Transport Authority apart from the documents to show that Chamar Sen had all along been in





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day he was not in possession of the stage carriage no. UEL 1167 and that he could not have used the same under the permit applied for. Learned counsel says that the fact that Lala Chatter Sen did not intimate under section 21 that the ownership of the stage carriage no. UEL 1167 had been transferred to him by the applicant on 29th October, 1949 clearly shows that there was another transfer of ownership and of possession under the documents, and he points out that there was no evidence before the transport authorities of the handing back of possession of the stage carriage under the new documents by the applicant to Lala Chatter Sen.

The submission of learned counsel that in cancelling the permit, the authorities concerned have exceeded or acted illegally in exercising the jurisdiction vested in them under sections 40 sub-clause (f) and (g) of the Motor Vehicles Act.

Learned counsel for the State argues that the Regional Transport Authority, in its order, dated 1st November, 1951 has stated that it was established by the deed, dated 9th November, 1949 that Chatter Sen and not the applicant had all along been in possession of the stage carriage no. UEL 1167 and had been running it and that, therefore, it cannot be said that that Authority had acted beyond its jurisdiction in cancelling the permit on the ground of nonpossession. He argues that it is not open to the Court to examine the correctness of the finding that Chatter Sen had all along been in possession of the stage carriage no. UEL 1167 and had been running it and argues that it could not be said that there had been an exercise of jurisdiction under section 40 of the Motor Vehicles Act. Arguments have been drawn by the learned counsel for the State to the case of *G. Farquhar Poley Pannu v. Pannu and Ramas Ltd.* (1). In that case it was held down that the

grant of a permit is entirely within the discretion of the transport authorities and naturally depends on several circumstances which have to be taken into account. It was held in that case that the Motor Vehicles Act is a statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation and that no one is entitled to a permit as of right even if he satisfies all the prescribed conditions that there is of permits providing what matters are to be taken into consideration as relevant and prescribing appeals and remedies from subordinate bodies to higher authorities and that the remedies for the redress of grievances or the correction of errors are found in the statute itself and it is to these remedies that resort must generally be had. It was further held that such writs as are referred to in Article 226 are obviously intended to enable the High Court to meet them as general cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them or there is an error apparent on the face of the record and such act, omission, error or refusal has resulted in manifest injustice. It was held that, however, extensive the jurisdiction may be, it seems that it is not so wide as large as to enable the High Court to correct itself once a court of appeal and exhaust the summation of the discussions engaged and decide what is the proper view to be taken or the order to be made.

1951  
State of Madras  
v.  
K. S. Gopalakrishnan  
AIR 1951  
Mad 100

In the end, the Supreme Court was of the view that that was not a fit case for interference with the discretion that was exercised by the Transport Authorities paying regard to all the facts and the surrounding circumstances.

1988  
100  
Baker/Scott  
v.  
Canada  
[1988] 1  
S.C.R. 3

In *Baker/Scott v. Canadian Council of Social Services* (1) said by the same Court it was pointed out that:

A writ of certiorari cannot be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong. It must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Once it is held that the court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course provided by law for wrong reasons right inasmuch as a court has jurisdiction to decide rightly as well as wrongly.

On the other hand, limited ground for the applicant has relied on the case of *R v. Northumberland County Council Appeal Tribunal* (2) (Stewart J.) which observed:

Error on the face of the proceedings has always been recognized as one of the grounds for the issue of an order of certiorari. I can find no authority for saying that in this respect there is any distinction to be drawn between proceedings of a civil and nature and civil proceedings.

His Lordship further observed in order:

The decision of the tribunal was a speaking order in the sense in which that term has been used. The court is entitled to examine it, and if there be error on the face of it, to quash it. . . . not to substitute another order in its place, but to remove that order out of the way as one which should not be used as the document of any of the subjects of His Majesty."

**Agenda Structure:** 1. P. returned

After all, it is the function of the court, as documents sponsors of law. Tribunals are sometimes given an unduly difficult task. There may be a feeling of dissatisfaction if it is recognized that a decision of a tribunal is wrong in law and yet there is no power to correct it—in other words if there is no right to obtain the opinion of the court. I am satisfied that the course I have suggested would result in a saving of time, and of expense and would be for the public good.

**Book Review**  
**Book Title:** \_\_\_\_\_  
**Author:** \_\_\_\_\_  
**Editor:** \_\_\_\_\_  
**Reviewer:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

Das Netz 1 ist über

We have here a simple case of error of law by a tribunal an error which they frankly acknowledge. It is an error which deprives the applicant of the compensation to which he is by law entitled. So long as the erroneous decision stands the compensating authority will not pay him the money to which he is entitled but the applicant should exchange them. It would be quite untenable if in such a case there were no means of correcting the error. The authorities to which I have referred simply show that the King's Bench can correct a law commission.

epilepsion that an error advanced openly to the face of the coast can be corrected by answers as well as an error that remains on the face of the record.

blowing. L. 1 has changed

It is plain that petitioners will not raise in the Court of its appeal an argument that does not lie in order to bring up an order or decision for rectifying of the same issued in the proceedings. It seems to correct error of law where revealed on the face of an order or decision as irregularity or absence of or excess of jurisdiction where shown.

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MONROE, J. further observed:

It was further said that, though these grounds were formerly wide enough to include cases where decisions were on the face of these, but in law, there has in recent years been a contraction with the result that contracts no longer lay for such review. It is said that this term for the exercise of the controlling power has fallen into abeyance. I can find no justification for this contraction.

It was suggested that the decision in the case of *G. Parappa Pillai v. Raman and Ramon Ltd.* (1) could not be said to be in accord with the view expressed in *R. v. Northumberland Compensation Appeal Tribunal* (2) and ruled out the correction of legal errors apparent on the face of the record.

It is not evident that the judgment of the Supreme Court has the effect of laying down that even where there is an error apparent on the face of the record which goes to the root of jurisdiction such an error may not be corrected. In this connection, it is necessary to quote the following passage from the judgment of their Lordships of the Supreme Court:

It is unnecessary for the disposal of this appeal to consider and decide on the exact scope and extent of the jurisdiction of the High Court. Article 226 whether the writs it can issue must be analogous to the writs of *habeas corpus*, *mandamus*, prohibition, *quo warrant* and *certiorari* specified therein and the power is subject to all the limitations, or restrictions imposed on the exercise of this jurisdiction, or where the High Court is in liberty to issue any suitable decrees or orders or writs or sentences] but by no means less whenever the interests of

problem so complex, so large and somewhat difficult problem which does not arise for solution now.

If the guiding principle in regard to the exercise of jurisdiction under Article 225 may be taken from the reported English cases, there seems no reason why the latest accepted position in England should not be considered as applicable in India also and there is nothing in the Supreme Court judgment referred to above which suggests that an error on the face of the record going to the root of jurisdiction may not be corrected. Moreover the language of Article 225 has to be kept in view.

Considering the growth of Departmental tribunals in this country, it seems, unless there is anything clearly to the contrary in the Constitution itself or in any case of the Supreme Court, that the writ jurisdiction may in a fit case be used for the purpose of not only keeping inferior tribunals within their jurisdiction, but seeing that they observe the law.

In the light of these remarks the contention of learned counsel may now be examined.

To take up section 46 sub-section (c) of the Motor Vehicles Act as the first instance the language of this sub-section clearly indicates that the possession must exist in respect of the vehicle covered by the permit. In other words it means that possession must have existed within the duration of the permit.

The case before the Regional Transport Authority seems to have been that there was no possession at all even at the date of the making of the application for a permanent permit for the applicant's possession had come to an end on or about 25th October, 1948 when the documents passed. It was not the case that the applicant's possession ceased during the currency of

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### Abstract

the bureau nor is there any evidence to suggest that the applicants were disappointed just prior to his applying for replacement. It would appear, therefore, that section 56, subsection (a) would not apply at all.

In law as section 58, sub-clause (f) is concerned in law there could be no fraud or misrepresentation in stating that the applicant held a temporary permit *et/ed* in the previous, under clause 10 of the application form, since despite the documents passing in law there could not have been a valid transfer of permit because of the prohibition under clause 58 sub-clause (1) of the Motor Vehicles Act even assuming that the documents were intended to be used upon.

So far as concerns the stage carriage no. USL 1387 on the date of the application for a permanent permit it appeared the finding of the Regional Traffic post authority that there was no possession at all on the date of application appears to have been based on an examination of the documents presented to the applicant. It is not stated that there was any real evidence of actual handing over of possession to and of subsequent possession by Charter Sea. The inference that Charter Sea had all along been in possession appears to have been drawn from the documents purporting to transfer the stage carriage. The power of attorney which vests with the owner, as with the applicant, is difficult to reconcile with the documents of transfer to Charter Sea. Under the circumstances no inference from the documents regarding possession could be drawn one way or the other. No real evidence is reflected in the order from which it could be found that the power of attorney had been acted upon. The failure, by themselves, of the power of attorney to not indicate the actual handing over of possession. The contents of the application made by Charter Sea on 15th



January, 1961 to the Regional Transport Authority Clerk, advises that Charter Six had not been passed even if the wage cartage when he made that application. The nature of this application does not appear to have been kept in case by the Regional Transport Authority as arriving at its demand.

1961  
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Wage Rate  
Increase  
or  
Right to  
Organize  
Dispute  
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Article 4

Under the circumstances it would appear that there is an error on the face of the record caused by a misreading and misreading of the relevant material and a failure to draw correct legal inferences from the facts which were before the Regional Transport Authority. The State Transport Authority Tribunal appears to accept the reasoning and conclusions of the Regional Transport Authority on the question of procedure.

Under the circumstances it cannot be said that it has been established that on the date when the application for a permanent permit was made the possession of the wage cartage had ceased from the possession of Charter Six or his wife. It has been held down in *Forrester v. Forrester and Forrester Ltd* (1) that the question which has to be considered in a case like this is not whether legal title to the wage cartage was passed, but what is the substance of it and that the right to obtain a permit depends upon the possession and not owner ship.

For the reasons stated above it would appear that the permission is, in this case, entitled to be held and that it is in the nature of a permit should also question the orders of the Regional Transport Authority dated the 11th July and the 3rd November 1961 and the order of the State Transport Authority Tribunal dated the 1st of August 1962.

So far as the second of the permission's purposes is concerned, it would appear that the correct order is passed in

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to direct the State Transport Authority Tribunal to consider the petitioner's application for the replacement of stage carriage no. USL 5167 by stage carriage no. USL 5618 on the same route.

In my view, this writ application should succeed on the reasons advanced above, and costs should be awarded to the petitioner and I order accordingly.

By this court's writ of certiorari will issue to quash the orders of the Regional Transport Authority, dated the 21st July and the 3rd November, 1934 and the order of the State Transport Tribunal, dated the 4th August, 1935.

The State Transport Tribunal will proceed to consider the petitioner's application for replacement of vehicle no. USL 5167 by vehicle no. USL 5618 on the same route. The petitioner is entitled to her costs which are Rs. 250.

Order accordingly.

## CRIMINAL REVISION

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*Before Mr. Justice MacMahon, on a difference of opinion  
Between Mr. Justice Harish Chandra and Mr. Justice  
Bhargava*

SANTWAL DAS

v

LALA NARAIN DAS

1921  
July 26

*Code of Criminal Procedure, 1898 s. 107-108.—Goods are  
Purchased in Rajasthan.—Goods sent to Aligarh—Misappropria-  
tion.—Complaints where in the State—Jurisdiction of all the  
courts.—Indian Penal Code 1860 s. 405—Appropriation of  
—Goods, some of*

Where it was alleged in a complaint that the complainant  
purchased 200 bags of articles from the respondent at Bikaner  
in Rajasthan, that he asked the respondent to send 100 bags to  
Agra and the remaining 100 bags to him at Aligarh and that  
despite related only to 100 bags, as 100 bags were delivered  
at Agra, and the misappropriation made by the complainant at the  
time of filing the complaint was as follows:—the respondent per-  
son was at Bikaner and did not send the bags of Aligarh.

*Held* [Per MacMahon and Bhargava.] [Justice Chandra  
] agreed—That as now s. 107 of the Criminal Procedure  
Code the misappropriation occurred at the place where alleged  
misappropriation was made, namely at Bikaner and as such the  
court at Aligarh had no jurisdiction.

*Held*, further that there being no evidence on record as  
yet that more than 100 bags were actually purchased by  
the complainant there could have been no misappropriation with  
regard to 100 bags in dispute within the meaning of s. 405  
Indian Penal Code and that no offence of criminal breach  
of trust was committed.

Criminal Revision No. 1140 of 1921, from an order  
of Rajkumaran Sen, Sessions Judge of Aligarh dated  
the 25th September 1921.

The facts appear in the judgment.

P. C. Chatterjee and A. Banerji for the applicant.

Krishna Shankar for the opposite party.

that  
HARSHAD  
DAS  
PRAKASH DAS

[This application for revision first came up for hearing before HALLAM CHANDRA, and BHARGAVA, JJ. was deferred in their opinion. Thereafter the case was laid up before BHARGAVA, J., who agreed with BHARGAVA, J. The case for first appeal came up before D-0-2, and BHARGAVA, JJ. who allowed the revision and quashed the proceedings.]

HARSHAD CHANDRA, J. — The facts of the case are fully stated in the judgment of my brother V. BHARGAVA, J., however differ from him on both the points. Section 488 which defines criminal breach of trust is reproduced below:

Whoever being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.

The present complaint comes within the second part of the section and as I read the complaint the complaint was a case where it is that the accused dishonestly used or disposed of the property which had been entrusted or disposed of the property which had been entrusted they would send 148 bags of cotton to Algeria. The complaint, no doubt, does not point out, nor was it necessary for him to point out the exact manner in which the accused had used or disposed of the property. In his statement which was recorded under section 500 of the Code of Criminal Procedure I find nothing which can be regarded as contrary to the allegations contained in the complaint. He clearly states that he had purchased the bags and Rs 500 is advance in the account

by bag of seventy and made a covenant with them that they would send 100 bags to Agur and the remaining 10 bags to Abiyah. Then de-patched bags of seventy to Agur and adjusted the price, but did not send 10 bags to Abiyah. When they returned the bags they refused to send them to him, out of dishonest motive.

He had some correspondence with them and the accused persons stated that he had purchased 249 bags of opium a. all. In the statement which he made in court he repeated the same facts and stated that in one of his replies Chandra Lal accused stated that more than 200 bags had been purchased for him. One of the accused was not present in person and an ex parte reply was given on his behalf by his counsel. The other accused Suresh Das was present in person but denied all knowledge of the transactions. They then gave no explanation with respect to the facts as alleged by the complainant in his complaint and subsequent statements. In view of a provision under section 496 of the Indian Penal Code was made out against the accused persons and the Magistrate rightly framed a charge against them under that section. No doubt the charge is slightly defective inasmuch as it does not clearly bring out the fact that the property namely 100 bags of opium had been entrusted to the accused persons and that they deliberately used or disposed of that property in violation of the terms of the contract which required that those bags should be sent to Akshay. The words actually used in the charge are "deliberately kept the same with you." The intention, however is clear. It will be open to the Magistrate to amend the charge to that it may correspond with the language used in section 496 of the Indian Penal Code.

In regard to the question of paradiplomacy, my learned brother neither agrees nor does he introduce to the Fall

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Second case, *Kash Ram Mohan v. Emperor* (1) it is only when the consequence is a necessary ingredient of the offence that section 179 applies and a case can be squared or unsquared by a court within the local limits of whose jurisdiction any such consequence has ensued. It will, however, appear that in an offence falling under the second part of section 180 the consequence, namely

the violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, is a necessary ingredient of the offence and, in that case of the matter, the courts at Aligarh have, in any view, jurisdiction to try the case. This view is supported by the Division Bench case of *Mohan Lal v. Emperor* (2). It will be noted that one of the judges who decided *Mohan Lal's* case, namely SCRAMOOR, C. J., was also a member of the Full Bench which decided the earlier case of *Kash Ram Mohan v. Emperor* (1). The facts of this case were some what similar to the facts of the present case. The accused *Mohan Lal* is an agent of a Kanpur firm, was alleged to have gone to different places and collected cotton on behalf of the firm. But he failed to remit them to the firm at Kanpur. It was held that the courts at Kanpur had jurisdiction to try the case. With all respect I agree with the view expressed in that case. In this case the allegation is that the accused went on armed with the bags of Ahmed on the express condition that they would send 100 bags to Agra and the rest to Aligarh. They sent the 100 bags to Agra but did not send the remaining 148 bags to Aligarh. The allegation was that they dishonestly used or disposed of those 148 bags and the statement contained in one of their letters to the complainant that he had not purchased

the 100 bags at all and they failed on the stipulated date by them to even go to support for the firm the complainant's allegation that the defendant used to deposit of these 100 bags of opium in the room of - a legal contract mentioned above. The complainant could not be expected to know both exactly the need to deposit of the bags and it was enough for him to see the fact that he had not fulfilled the contract not to impute the consequences from which it appeared, more over that he had defendant used to deposit of them in violation of the oral contract. A provision made under section 49 of the Indian Penal Code is made out against them which in view of the law laid down in *Mahomed Ali's case* can be used in Aligarh.

I would, therefore, dismiss the petition and discharge the order staying further proceedings in the case.

**Statement, 3.**—The application for revision has been filed by one *Harad Das*, proprietor of *Firm Shanti Lal Shukla* and his uncle *Chanda Lal*, residents of *Baram* district town in Rajasthan.

A complaint was filed against both these applicants by *Lala Narain Das* opposite party, in the court of a Magistrate at Aligarh alleging that the applicants had committed an offence punishable under section 49 of the Indian Penal Code. The complainant's case was that he was carrying on business at Aligarh and on August 1945 he came to the applicants at *Baram* and through their commission agents purchased 100 bags of *Shani Gumbhat* from the firm of the applicants. He further purchased 40 bags of *Shani* from other dealers in the market at the same place and returned the entire stock of 140 bags to the applicants. He paid a sum of Rs.500 as advance to the applicants and entered into an arrangement that 100 out of 140 bags were to be sent to Aligarh and returning 40

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in Aligarh. The complainant then returned to Aligarh. After some time, 100 bags were despatched by the 1946 train to Agra and the price of these 100 bags of dhatura was realised, but the remaining 146 bags were not sent to Aligarh. The case of the complainant was that these 146 bags contrary to the instructions of the complainant were dishonestly brought to use by the applicants for their benefit and that the applicants equally relied on good accounts to the complainant. On receipt of this complaint, the learned Magistrate recorded the statement of the complainant under section 280 of the Code of Criminal Procedure and then examined both the applicants. The trial started and, during the trial, the complainant examined himself as a witness and further produced one more witness, Vanshi Lal. Thereafter the statements of the two applicants were recorded and then the learned Magistrate framed a charge against both the applicants. In the charge the learned Magistrate gave details of the contract that had been entered into by the complainant with the two applicants and thereafter proceeded to say:

You were told to send 100 bags to the complainant at Agra and 146 bags to his firm at Aligarh. You did not send 146 bags up to this time and have dishonestly kept the same with you and thereby committed an offence punishable under section 406 of the Indian Penal Code.

After this charge had been framed, the applicants moved the learned Sessions Judge at Aligarh to quash the proceedings and to discharge them as owners of the goods of no use. The learned Sessions Judge rejected this application and consequently the applicants have now come up to this Court on this revision.

Two principal grounds have been urged in support of the revision. One ground is that, even if the whole



is placed given on behalf of the prosecution by taking into account, no one is made out indicating that any offence had been committed by either of the two applicants so that no charge should have been framed and the applicants should have been discharged. The second ground is that the learned Magistrate at Algiers had no jurisdiction to try the applicants as "one" of the persons of the Code of Criminal Procedure and consequently the proceedings were liable to be quashed.

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firm of the applicants. The invoice was sent along with the 100 bags of wheat sent to Agre and in the invoice the sum of Rs 100 which had been paid in advance was set off towards the amount due. The complainant admitted that the amounts of these 100 bags were completely settled and the advance of Rs 100 which he had given to the applicants was adjusted in the accounts. An invoice has been produced by the respondent 100 bags which the complainant claimed to have been purchased from the applicants. There was a letter from the applicants firm dated the 1st of Nov. 1918 in which the complainant was informed that for the remaining 145 bags the complainant had neither sent a deposit nor had he arranged that the goods be weighed and consequently the order for these 145 bags was to be treated as cancelled. Thereupon the complainant said that he sent a registered letter to the firm of the applicants and in reply he received a letter Rs P<sup>2</sup>. In this reply the complainant was informed that 200 bags were never purchased by the complainant in the firm of the applicants and that only 800 bags had been purchased. This letter was dated 14/2/1919 of Nov. 1918. After the receipt of this letter, the complainant filed his complaint on the 25th of June 1919. Thus the case of the applicants is that the actual purchase which had been finished was in respect of 100 bags only and the advance deposit of Rs 100 also set-off to the purchase of these 100 bags. The transaction with regard to the remaining 145 bags was never completed so as to result in actual receipt of commodity in those bags to the complainant. It was argued that the fact that the advance of the sum of Rs 100 which was deposited on the date the transaction by the complainant was adjusted completely in the accounts relating to these 100 bags clearly shows that the agreement, which had

been completed related to no more than 100 bags. It is for this reason that the applicants demanded a further deposit from the complainant. It was also stated that only 100 bags had been weighed at the port of the complainant at the time of the initial contract and there had been no weighing of 145 bags. This was admitted by the complainant but the complainant came forward with the plea that the weighments of these 145 bags was not possible simply for the purpose of making additional expenditure to the applicants but said that the bags could be weighed in the railway station when being despatched to Algiers. I do not doubt that this explanation of the complainant can be accepted. If expenditure was to be avoided by having only one single weighment instead of two weighments there is no reason why the first 100 bags or at least the first 50 bags purchased by the complainant from the applicants first should have been weighed when the complainant were to place the order as all these bags were the ones to be weighed again at the railway station when being loaded for Algiers. This correspondence which has all been produced by the complainant himself clearly shows that on fact the transmission of purchase of the further 145 bags alleged by the complainant had not been completed and property in these bags had not passed to the complainant from the applicants. The complainant had only placed a pre-arranged order and it was for this reason that the applicants first went to the complainant to send a deposit in respect of these 145 bags and to send a man to have them weighed. When the complainant failed to comply the applicants first cancelled the contract. The complainant presented its making a demand for these 145 bags without agreeing to make a deposit or to send a man to have these bags weighed and also require the 'warehouse' from which the initial purchase had been to report

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of 145 bags, and that there had never been any export order which 145 bags of alfalfa had been purchased by the complainant from the applicants then.

The evidence of Morales Led shows that even after the initial agreement had been entered into between the parties, the sales of alfalfa went up and it was when the rates shot up that the complainant wanted the order for 145 bags to be treated as a sale which had already been completed so as to be able to get those 145 bags at the lower rate which was prevailing when the complainant had gone to Britain for the initial contract.

The evidence of the complainant and Morales Led taken together with the statements of the two applicants decisively indicates that this was a case where the dispute between the parties was of a purely civil nature. The complainant came forward with the case that there had been a complete contract of purchase and sale which amounted to a further 145 bags had passed on him and three bags were returned to the applicants to be sold at Algeira. On the other hand the case of the applicants was that the contract had been completed only in respect of 175 bags whereas in respect of the remaining 145 bags there was only a provisional order placed by the complainant with the firm of the applicants. The circumstances that a deposit of Rs 500 each was made to the complainant and that this deposit was adjusted when there was a final accounting with regard to 145 bags went to Alpha clearly point to the completion of the contract both to the applicants. In any case the court's evidence goes on behalf of the complainant and about that there is a dispute between the parties that the terms of the contract and there is no question of any dishonest appropriation as can be the evidence of the parties belonging to the complainant. In the conclusion it is significant to note that in his statement

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on each of them. When giving evidence, the complainant did not to the best of his belief say that the 145 bags belonging to him had been misappropriated by the applicants or converted by them to their use. There was no claim a statement as had been alleged in the complaint that the applicants had brought those 145 bags into their use for their benefit. All that the complainant proved was that the applicants detained the goods and did not send them, as a result of which the complainant had sustained a loss of more than ten thousand rupees. On the face of it the facts alleged to be the complaint or his evidence on the trial case did not make out any prima facie case at all of criminal breach of trust. The criminal breach of trust is defined in section 404 of the Indian Penal Code as committed only when the person charged with committing it dishonestly misappropriates or converts to his own use the property entrusted to him or uses or disposes of the property in violation of any contract or any provision of law. In this case the complainant's evidence does not go to the extent of proving that 145 bags which he alleged he had entrusted to the applicants had either been misappropriated by the applicants or converted to their use nor did he prove that those bags were dishonestly brought to use or disposed of by the applicants. Certainly there was violation of contract between the parties if it be held that there had been a contract under which 145 bags had already been purchased by the complainant, and the applicants had agreed to send those bags to Akoria. It is not every violation of a contract that constitutes criminal breach of trust. An offence of criminal breach of trust requires these important conditions:

(1) There should be entrustment of property.

(2) the property should have been misappropriated or converted to use or used or disposed of in violation of the contract and

- (g) this should not have been done dishonestly.
- Th.* (g) this should not have been done dishonestly.
- Same, Dis.* In the present case the evidence given on behalf of the prosecution does not go to the extent of proving that there was any surreptitious entry or conversion to use or use in disposal of the bag by the complainant. Come equally it is if the case prosecution evidence be believed the facts proved do not constitute an offence of criminal breach of trust. Accepting the prosecution evidence all this can be held is that there had been a violation of the contract by the detestation of the goods and by not sending them to Algaib Jan, there is no reason to take that the detestation of goods and failure to send them to Algaib Jan implied that the bag had been used or disposed of by the applicants. In fact when the applicants were returned to court they expressed readiness to send the bag under proper conditions. The applicants even went to the extent of offering to reimburse the complainant for any damages that might be found due on violation of contract. This willingness to meet the civil liability for damages for breach of contract if one had taken place clearly indicates that the criminal complaint was brought in the complainant merely to bring pressure on the applicants and that the applicants had never committed any acts which would constitute the offence of criminal breach of trust. On these facts there were no sufficient grounds for the magistrate to frame a charge against the applicants for having committed the offence of criminal breach of trust punishable under section 406 of the Indian Penal Code. It may be noted in this connection that even in the charge all this the magistrates lay stress is that the respondents dishonestly kept the bag with them and thereby committed the offence punishable under section 406 of the Indian Penal Code. From the foregoing it is clear that from the nature

For since the applicants had kept the bags with them no inference followed that the applicants had used or disposed of the bags. I do not think that any such inference can reasonably be drawn. The complaint in this case was a miscellaneous remedy on the part of the complainant who should have sought to obtain in the civil court by bringing a suit for specific performance of contract as to the difference for damages.

There is the second general issue of the opinion that the applicants must succeed and it must be said that the court in *Alipah* had no jurisdiction to try this case. Section 117 of the Code of Criminal Procedure lays down that—

every offence shall ordinarily be enquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

The facts as alleged in the complaint clearly showed that the offence of criminal breach of trust with which the applicants were charged was committed entirely at Barrow in Singapore and not at Alipah. The same plea was a mere allegation was that 148 bags which the applicants did not send to the complainant and had used for their own benefit were entrusted to the applicants at Barrow. The only plea of the applicants was to dispatch them from Barrow by rail when the booking for Alipah opened. There was no suggestion at all that those bags were ever brought to Alipah or that the applicants brought them to their use at Alipah. The trend of the complaint shows that according to the complainant the act of bringing those 148 bags into their use for their own benefit committed by the applicants must have been committed at Barrow if at all and not at Alipah. All the acts constituting the offence as well as the entrustment of the property which was entrusted done outside the jurisdiction of the

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Algeria under this, under version 177 of the Code of Criminal Procedure, the one should have been kept in Algeria for the court having jurisdiction in Syria in accordance (in of version 181 of the Code of Criminal Procedure) is of no resource to the complainant. The complainant should show that the property, as to part of which contained branch of trace was shipped was received and returned by the authorities in Russia and not in Algeria. On behalf of the prosecution, reference was placed on version 178 of the Code of Criminal Procedure to support the proposition that this case could be tried in the courts in Algeria. See art 179 laid down.

178. When a person is accused of the commission of any offence by reason of an thing which has been done and of the consequence which has ensued, such offence may, be imposed upon or tried in a court within the legal limits of whose jurisdiction such thing has been done or in such consequence has ensued.

In this case, the authorities were accused of the commission of the offence of committed branch of trace by reason of their having dishonestly brought in the same 181 bags in their own hands. The charge against them was consequently tried on their act of bringing the bags into their own use and this act, as I have said above was never alleged to have been committed in Algeria. If committed at all it was only committed in Russia. The issue here that the complainant suffered loss in Algeria because the bags were not sent to him, there would not make version 179 of the Code, of Criminal Procedure applicable. The consequence mentioned in version 178 of the Code of Criminal Procedure means only such consequence as is a result, the result of an offence which is to be tried. In







certain site of water in question has been collected by Mohan Lal prior to his last residence in the of December 1941 and therefore the argument is that the accused (Mohan Lal) had misappropriated these items of goods. The learned Judge, looking into the case held that on these facts Mohan Lal was not being prosecuted under the first part of section 481 of the Indian Penal Code which deals with dishonest misappropriation in conversion of property. It was concluded

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To charge a person under the first part of the section there should be an allegation that at a particular time and place that person had dishonestly misappropriated or converted to his own use the property which was entrusted to him. Now the second part of the section came to be a requisite part. In absence of dishonesty it is a dispensary of property in violation of—

(a) an direction of law or

(b) any legal contract touching the discharge of the trust.

Where there is a violation of a direction of law or a legal contract the proof of the violation may be by negative evidence that the direction of law or the contract has not been fulfilled. We go on again that where the direction of law or the contract requires that the accused should deposit the property at a particular place then the owner having possession at that place will have prima facie proof of the offence of the second part of section 481 I.P.C. where there is a charge that the accused has failed to comply with the direction of law or the legal contract and has failed to carry out his duty at that place. The first part of section 481 will apply where it is known that the accused had dishonestly misappropriated or

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assigned to his own two children page 11. It is a question of principle. The question as to the record will be in the place where the defendant, who participated in conversion has taken place that where it is alleged that the defendant has failed to account for the property then the second part of section 4(1) of P.C. will apply and whether the money is the place where the property should have been retained by the record.

When considering the case the learned judge held as follows:

On the facts of the case as the present case the Nigerian at Kragge had possession because the Nigerian in the complaint was the record which money retained by him and not the record is in Kragge. There is no charge that he misappropriated or converted to his own use the money in the present case and his defence rests on failing to give any account and since the money is being the money in Kragge. He was guilty of an illegal conversion. Section 4(1) of P.C. provides that a person is said to be legally bound to do whatever it is charged as being the case. He is a legally bound to return the money to Kragge and he failed to do so. He therefore, committed an offence within the provisions of the Nigerian at Kragge by his illegal conversion to and is being the money in Kragge.

In my opinion the case is not applicable on the facts of the case before me. In that case it was held that the Nigerian at Kragge had possession because the charge against the record was based on an illegal conversion to maintain it a contract. In the case before me the charge is not based on an illegal conversion but on a

positive act. In the complaint it was clearly alleged by the complainant that the applicants had dishonestly brought in the two deer skins bearing the goods marked on them. This was not on a positive act was by itself sufficient to constitute the offense of criminal breach of trust, and there was no question of failing to act honestly on the part of the applicants in being necessary ingredients of the offense alleged against them. The complaint did contain the allegation that the applicants had openly refused to give accounts to the complainant, but that omission to render accounts was not at all a necessary ingredient of the offense of criminal breach of trust as alleged in the complaint. The complaint contained in it no allegation of the positive act of bringing the goods in and not of the negative act of refusing to give accounts. The positive act alleged was by itself sufficient to constitute an offense of criminal breach of trust, whereas the negative act of refusing to render accounts did not so the allegation in the complaint constituted the offense of criminal breach of trust. There was also the allegation of the omission to send the bags to Algiers. A mere failure to send the goods to Algiers or to render accounts as the complainant could not in this case be held to constitute the offense of criminal breach of trust. If it could be held that the goods were not kept intact by the applicants with them or to be sent to the complainant, but the applicants did not send the goods to Algiers and refused to render accounts to the complainant it could not be said that an offense of criminal breach of trust had been committed by the complainant. The main distinguishing feature therefore is that in the present case, the charge is based on the positive act of bringing the goods in and not on the negative act of refusing to render accounts, and consequently, the view expressed by the learned judge in *Mohr's Case* may be applied in this case. I may agree

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statement as has been said by me, I think, that the offence of criminal breach of trust is defined in section 405 of the Indian Penal Code, requires the commission of any of the four acts, falling the commission of any of the four acts.

- (1) dishonest misappropriation
- (2) dishonest conversion to his own use in the service charged
- (3) use of the property by the person entrusted with it for his own benefit and
- (4) disposal of the property.

The first two acts of misappropriation and the disposal of the property must be in violation of any direction of his in a legal contract. The commission of any of these four acts might lead to the conclusion that one of these four acts had already been committed. The offence could, however, be committed not by the accused but by one of these four persons and it would then be open to courts to examine whether the commission of one of the four persons was rightly inferred from the evidence. The evidence would therefore be a circumstance that would not by itself constitute the offence. In this case, I have to say some doubts about the sufficiency of the evidence of the Breach Branch in *Mohini Lal's* case in this respect of the case does not appear to have been examined by the learned Judge. I do not, however, think, that it is necessary for purposes of the decision of the present case to have that question is decided of because of the view that on the evidence given by the prosecution we prove first of all commission of an offence of criminal breach of trust against the applicants as made out, and that the facts of this case are distinguishable from the facts of that case so that the view expressed in that case is not applicable.

There was some argument before us whether the point decided is to be determined by the allegations in the complaint, or by the facts found by the Magistrate as indicated in the charge framed by him or by the facts which might be held by this Court to have been relevant in the prosecution on the evidence given on their behalf. A learned single Judge of this Court, in the case of *Empress v. Dattan Singh* (1) gave a decision indicating that the prosecution is to be determined on the facts given in the complaint and not on the facts as they appear subsequently during the trial of the case. In *Shiv Shakti v. Mahesh Singh* (2) a Full Bench of this Court held

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Now the question of prosecution must be decided on the facts in a petition of the complaint. It is on the terms of the complaint that the Magistrate tries first, he is to inform himself as to the nature of the case and see whether from the allegations made in the complaint it would appear that he had jurisdiction to entertain it.

In *Arjunan v. Ruch* (3) a learned single Judge of this Court held

Coming to section 151 the learned Judge was correct in pointing out that prosecution must follow the complaint and not the final decision.

It is because of the views expressed in these cases with which I see no reason to differ that I have come down the question of prosecution in the present case with reference to the facts given in the complaint alone. If the question of prosecution be decided on the basis of the facts found by the Magistrate as inferred from the charge framed by him it is again clear that the Magistrate in *Alaghi* had no jurisdiction to try the case.

(1) 1954 A. M. 27 of 20. (2) 1954 A. M. 10 of 20. (3) 1954 A. M. 10 of 20.

*Held* The charge only asserts that the applicants kept the goods with them, and thereby committed the offence punishable under section 486 of the Indian Penal Code. The goods were first kept at Birwa and not at Algaah. In respect of the question whether the facts alleged in the charge do or do not constitute the offence of criminal breach of trust, there is no doubt, in my view, that the fact that the goods were first kept at Birwa and not at Algaah is a necessary ingredient of the offence of criminal breach of trust. Finally, my view of the facts that are to be held to be proved on the evidence given by the prosecution in this case, is that they do not constitute the offence involving an act committed at Algaah. In any event of the case, therefore, the crime at Algaah could have no jurisdiction to try this case.

I would, consequently, allow the revision and quash the proceedings pending against the applicants at the court at Algaah.

[As the Judges constituting the Bench were divided in opinion the case was laid before another Judge in accordance with section 138 of the Code of Criminal Procedure.]

**MORRISON, J.**—Section 171 of the Code of Criminal Procedure provides that every offence shall ordinarily be inquired into or tried by a court within the local limits of whose jurisdiction it was committed. This general provision is supplemented by the sections which follow, and in particular by section 178 which provides that—

When a person is accused of the commission of any offence he is liable of anything which has been done and of any consequence which has ensued such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction



any such thing has been done, or any such course  
question has arisen.

It is in my opinion settled, up to at least as this Court  
is concerned, that section 117 applies only when the  
offense is subject of which complaint is made. Complaint  
both the act done and the consequence which has ensued.  
The consequence, in other words, must be a necessary  
ingredient of the offense. This was so held in the Full  
Bench case of *Kane, Rex, Martin v. Emperor* (1).

The applicant is alleged to have committed crime, to  
breach of trust, an offense which is constituted when a  
person entrusted with property or with dominion over  
property either—

(a) dishonestly misappropriates or converts that  
property to his own use, or

(b) dishonestly uses or disposes of that property  
in violation of any direction of law prescribing the  
mode in which such trust is to be discharged or  
of any legal contract, express or implied, which he  
has made touching the discharge of such trust or  
willfully suffers any other person to do so.

In cases which fall in class (a) the offense is complete  
as soon as there is misappropriation or conversion with  
a dishonest intention. The fact that the owner of the  
property has suffered or may suffer loss is not material,  
and the court which will have jurisdiction is the court  
within whose jurisdiction is the place where such mis-  
appropriation or conversion occurred. If such mis-  
appropriation or conversion occurred in more than one  
place then under section 117 of the Code of Criminal  
Procedure more than one court will have jurisdiction.  
In cases which fall in class (b) the offense is complete  
as soon as the person entrusted dishonestly uses or dis-  
poses of the property in violation of any direction of  
law relating to the discharge of the trust or of the

contract which he has made concerning the discharge of such duty. In both cases of course it is, as was pointed out by *Stewart v. C. J.*, an *ad hoc* *Res Gestae* case (3). *Stewart* raises a pure question of fact where, as in what came after, the offering was complete. The dutyman issue of this case came in some filling station of an *ad hoc* *Res Gestae* difficulty, and each case will depend on its particular facts. If an agent is entrusted with goods for sale at auction, and a "receiver" under his contract to return the unsold goods and return an account to his principal is afterwards found to be taking to the auction room, he is the only evidence of his dishonest intention, in which case, the offering may be required to be either by the court in *Lockman* (under version 18112 of the Code of Criminal Procedure) or an *Admiral*. Thus in *Stewart v. C. J.*, *Empire* (2) where he turned out to be not his employer, a keeper so bound to effect delivery of goods, to selling the price of goods from customers, and then, this is being possible or to return the proceeds to keeper, and the only evidence against him was his failure to do so being to return the proceeds to keeper, it was held that it was that fact which evidence his dishonest intention and the keeper could not perjure himself. The court cited with approval a passage from the case of *Paul & Flanders v. Empire* (7), in which it was said:

If there is evidence apart from the fact of non-accounting to show where the misappropriation was committed, the venue must be laid either in that place or in the place where the property was received or returned. If there is no evidence to show where the misappropriation was committed other than the fact of non-accounting, then the venue may be laid in the place where the accused

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failed to account. bearing that is where the offence was committed within the meaning of section 181. An illustration was, perhaps, clearly the position. X is concerned in Colonel's work & had to deliver an Allahabad. The book is not delivered. If it is the prosecution case that X dishonestly sold the book, as Colonel is clearly putting one of his points to discharge the issue the offence is complete and the Colonel must show it did have jurisdiction to try X. If on the other hand there is an evidence to show where the misappropriation occurred the proof of misappropriation depending solely on the failure of X to deliver the book is Allahabad; that fact is a necessary ingredient of the offence which can therefore be used either in Colonel or Allahabad.

In order to determine the question of jurisdiction the court will examine the complaint with each state made, it will be made to the complainant when the complaint is filed. The complaint is the present one says that the complaint is purchased 144 bags of muslin. First he asked me accused to send 100 bags to Agri and the remaining 44 bags to him in Aligarh. One hundred bags were duly delivered to Agri; the discrepancy in the remaining 44 bags. Which served as the complaint was.

The above goods contrary to the instructions of the complainant were dishonestly brought to me by them for their benefit, and then have illegally sold to give income to the complainant. In his statement when the complaint was filed the complainant said:

"The accused persons out of dishonest motive did not send the bag of Aligarh."

The inference to be drawn is clear. It is that the misappropriation occurred at the place where the alleged

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extrajudicial was made merely in favour of Ragnetta, and I am of opinion, therefore, that the case is, *Alipho* had no jurisdiction.

The essence of the charge against the accused is that, in violation of the trust reposed in them, they did not send to *Alipho* 100 bags which were given to them for that purpose. I am, however, far from evidence of the commission. With the exception of course I first examined the evidence and I am of the opinion that the complainant did not in fact purchase more than 100 bags. So far as regards the remaining 100 bags, it appears then that all that the complainant had done was to enter into an agreement with the accused who agreed to procure a commission agent to purchase the quantity of bag through them as a future lot. There is no evidence whatever that more than the agreed 100 bags were actually purchased by the complainant. Whether the failure to implement the contract was due to his default or that of the accused it is not for the Court to decide but I think it is clear that none of the 100 bags were in fact purchased by the complainant and that therefore there could be no bags no commission within the meaning of section 401 of the Indian Penal Code. The dispute between the parties is in my view essentially one of a civil nature. I agree therefore on both points with the conclusion reached by Mr Justice Bowen *et al.* and accordingly I would dismiss the application and set aside the order of the court below.

By the Court.—[*PER DAVID and ARTHUR JJ.*]—In view of the opinion of the third Judge, this motion is allowed and the proceedings pending against the appellants in the court below are quashed.

*As usual allowed.*

## CIVIL MISCELLANEOUS

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*Before Mr. Justice Venkatesh and Mr. Justice Sanyal*

MESSRS. RAMESHWAR PRASAD KEDARNATH

(Applicants)

VS

THE DISTRICT MAGISTRATE KANPUR AND

OTHERS (OPPOSITE PARTIES)

1932  
T. 10000 2

**Commission of India, 21 113—**License of a dist. dealer cancelled by District Magistrate—Applicants for return of revenue not heard and decided upon merits—Orders of ad. magistrate—Power of High Court to quash administrative orders

The applicant, carrying on business of dist. at K. under the name of M. was granted a license in Form 32 under the Com. notified Custom Code and Trade Ordinance, Licensing Order, 1916, and was licensed dist. The license was renewed twice and was allowed to expire on the 31st October 1931. Before its expiry, on the 26th May, 1932, M. was served with a notice by the District Magistrate of K. that his license had been cancelled on account of the adulteration committed by him and he had requested that he was entitled to compensation of not less than Rs. 100000000 or, if being found guilty, paying notice of the order cancelling his license at once, in terms, the notice.

Upon an application for writ of a writ of *habeas corpus* of the Commission of India.

Held that as regards the writ of the Licensing, to carry on business, in terms, the license of M. being an administrative order, the order is quashed as High Court has power under Article 226 of the Constitution to issue directions and orders as well as writs for any purpose.

(Order granted)

Civil Miscellaneous No. 173 of 1932

The facts appear in the judgments.

G. V. Periah and R. V. Periah, for the applicants

The Standing Counsel for the opposite parties



and subsequently made on his behalf is that the District Magistrate in determining whether his licence should be renewed was bound to hear the petitioner and afford him an opportunity of refuting the allegations made against him. It is also contended that on his order refusing to renew the petitioner's licence, the District Magistrate did not state the reasons therefor within the meaning of clause 11 of the L. P. Controlled Cotton Cloth and Yarn Dealers Licensing Order 1948 that the order refusing to renew the licence was made with full and finality, that clause 11 of the Order if it does not require the District Magistrate to give the person concerned a hearing before refusing to renew his licence is unreasonable and void as being in conflict with Article 14 of the Constitution.

IN  
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NO. 1000  
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"Clause 11 of the Order is in the following terms:

A licence granted under this Order shall, unless previously cancelled or suspended, be valid for 12 months from the date of issue but may on application made not less than one month before the expiry of the said period be renewed for a year or, at the option of the licensee, for the term prescribed in respect of such licence in Schedule II.

Provided that the Licensing Authority may for reasons to be recorded in writing refuse to renew a licence.

The question on behalf of the State is that the material on which a licence is granted is administrative and that reference is placed on the record decision of the Price Control in *Andhra Pradesh v. Janabhai* (1).

In a well known passage in his judgment in *The King v. The Attorney-General, ex parte Attorney-General* (2) Lord E. J. [3] has thereupon defined the conditions subject to which the





down the list, the passage from Lord Justice Atkin's judgment in *The King v. The Electricity Commissioners* (1) to which I have referred and all the learned Judges who constituted the majority took the view that as there was nothing to be found in the Ordinance, which required the Provincial Government to act judicially in deciding whether the project in dispute was required for a public purpose, the Provincial Government acted in an administrative capacity. *Knox C. J.* (with whom Paterson J. joined) is he then was agreed; and in page 418

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it seems to me that the issue presents a case where the law under which the authority is making a decision itself requires a judicial approach, the decision will be quasi-judicial.

and Dr. J. (at p. 715)

If a statutory authority has power to do an act which will gravely affect the subject there, although there are not two parties upon the authority, and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act, provided the authority is required by the statute to act judicially.

It is therefore, necessary in the first place to examine the U. P. Controlled Customs Check and Turn Dealers Licensing Order. It is common ground that there is nothing in the Order which expressly, or by necessary implication requires the duty on the Licensing Authority to act judicially unless it is to be found in the requirement contained in the proviso to clause (1) that if the Licensing Authority refuses to issue a license he must record his reasons therefor in writing. It is also common ground that there is nothing in the Order

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which place, however, the intention of the Legislature does the exercise by the Court of its power to issue a writ of certiorari in appropriate circumstances should be excluded. I do not doubt, also, the fact that the Licensing Authority has to render his return when he refuses to issue a license is, in the absence of any specification of the grounds on which a refusal may be refused or unless of any other limitation on his power in this respect a sufficient indication that he has to act judicially. I am therefore of the opinion first we are bound to hold that the act of the Licensing Authority in refusing to issue the petitioner's license was an administrative act, and that accordingly the Court cannot interfere with such order by a writ in the nature of a certiorari.

I venture to think, however, that the question whether the Licensing Authority acted quasi-judicially or merely administratively is one which is somewhat unusual. The Court has power under Article 226 of the Constitution to issue directions and orders as well as writs for the purpose, and in exercise of this power it can direct that an administrative order be quashed, see *Prattichut Devi Sahai v. The District Magistrate, Bhabhul* (1) and *Ram Chander Pal v. The Secy of Dist. Board* (2). The question therefore which is an question with regard to whether the order complained of in this case is an order made in exercise of which was contrary to the elementary principles of justice, for, if this question be answered in the affirmative I am of the opinion that whether the order be quasi-judicial or administrative, the Court would be justified in directing that it be quashed.

Now, there is a line of cases in England which is authority for the general principle that in the absence

of its own provisions to the contrary, no man can be deprived of his property without having the opportunity of being heard. That this is so is established, I think, by cases such as *Cooper v. The Board of Works for Westminster District* (1), *Hopkins v. Southwark Local Board of Health* (2) and *Smith v. The Queen* (3), the last being a decision of the Privy Council. In *Cooper's* case the Board of Works were empowered by statute to pull down a house if the builder had neglected to give notice of his intentions to the Board seven days before beginning to dig or lay the foundations. Whether any notice was given in this case was a matter of dispute, but *Cooper* submitted that he had commenced digging on the fourth day within five days of the day on which he alleged he had been notified. The house had reached the second story when the Board, without notice to *Cooper*, sent their workmen to the site and razed the building to the ground. *Cooper* brought an action for damages. The defence was that the Board had acted within its legal rights under section 75 of the Metropolitan Local Management Act 1862 (Stat. C. 3) and

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The contention on behalf of the plaintiff has been that although the words of the statute taken in their literal sense without any qualification at all would create a justification for the act which the District Board has done, the powers granted by this statute are subject to a qualification which has been repeatedly recognized that no man is to be deprived of his property without having an opportunity of being heard. I think the power which is granted by the 75th section is subject to the qualification suggested. I think the Board ought to have given notice to the plaintiff and to have allowed him to be heard.

ON APPEAL FROM THE DISTRICT COURT OF WESTMINSTER  
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THE  
HON. MR. JUSTICE  
LORDS OF THE  
JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL  
IN CHAMBER  
JANUARY 28, 1954

THOMAS J., in the same case had done the law as these reports

I apprehend that a tribunal which is by law invested with power to direct the property of one of Her Majesty's subjects is bound to give such subjects an opportunity of being heard before a decision is passed; and that rule is of universal application and founded upon the primary principles of justice.

The principle laid down in *Casey v. The W. & A. Co.* applied by the Court of Appeal in *Hoyles v. Southdown Local Board of Health* (1) also is a canon for tribunals in tribunals.

This principle had indeed been affirmed a few years earlier in *Smith v. The Queen* (2) decided by the Privy Council in 1878. In that case the appellants had obtained from the Crown a lease of a plot of land measuring about 270 acres in Queensland, Australia, for a term of ten years. The lease was granted under the Crown Lands Alienation Act, 1865, which section 15 of section 51 of which provided that: 'the lease of any agricultural or pastoral land, the terms on which it shall be made to such selection continuously and lease for during the term of his lease provided that, if at any time during the currency of the lease, it shall be proved to the satisfaction of the Commissioner that the lessee has abandoned his selection and failed in regard to the performance of the conditions of residence during a period of six months it shall be lawful for the Governor to declare the lease absolutely forfeited and voided.' During the currency of the lease, the young Governor when reported that it had been proved to him after he had been that the appellants had abandoned the plot and had failed in regard to the performance of the conditions of residence during a period of six months, and a few days later the Governor issued a proclamation

declaring the lease to be absolutely invalid and voided. It was contended on behalf of the appellants that since there had been no proper hearing before the Commission which would enable the Crown to show that there had been proof to the satisfaction of the Commission such as is required by the statute in either abandonment or non-residence. The Crown contended that the Commission's decision on questions relating to forfeiture was purely ministerial but their Lordships held that subsection (7) of section 51 was not so limited in terms nor was it so limited by reasonable construction. The Judicial Committee were disposed to think that there had not been a finding of the Commission of abandonment apart from non-residence. But, their Lordships said, they decide the case upon broader grounds. It appears to them that the defendant had not been heard in the sense in which a hearing has been used in the cases which have been quoted in many others and in the sense required by the elementary principles of natural justice.

I think these cases are, as I have said, authority for the salutary principle that a man must not be deprived of his property without being given the opportunity of being heard. But does a man's property stand in this respect on a special and exclusive footing? I can see no principle why that should be so. The loss of a man's right to carry on his business may be no less serious in its consequences than the loss of his property and under the Constitution, the right to hold property and the right to carry on a business are equally fundamental rights possessed by every citizen. If there be authority—as I think there is—founded upon the plainest principles of justice—that (in the absence of statutory provisions to the contrary) a man be not deprived of his property without being heard I can see no reason why that principle should not be applied

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to the protection of another fundamental right, namely the right to carry on business.

Nobleddé *dit le Jeune* (1811) was an artisan, much valued on St. Vincent. Nobleddé *dit le Jeune* was a dealer in spirits in Cayenne who had been granted a licence to carry on his business under the Decree (Statute) of Trading Regulations, 1811. In 1812 his licence was revoked under Regulations 1812 which provided that

Where the controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue to trade, the controller may cancel the trade licence on the ground that he has falsified, or is going to do so in his dealings with the Trade Company Fund. The applicant applied for a writ of certiorari alleging that the first he had not been given a proper opportunity of answering the charge against him. The Privy Council held that the cancellation of the licence was an executive act, the Controller having no duty as such judicially. It is true that Lord Brougham when he made a licence, he is not determining a question. He is giving executive power to another, a privilege he must be believed, and his reasonable grounds, or believe that the holder is unfit to carry it.

I have stated the reasons why, in my opinion, the fact that an order is an administrative one is not necessarily conclusive against the exercise by the Court of its power under Article 226. It has not been the State's contention that the Licensing Authority was not, in the present case, determining a question, and in my judgment it is clear that in contrast to Nobleddé *dit le Jeune* the present petitioners had, by virtue of Article 155 of the Constitution, the fundamental right to carry on his trade as business subject to such reasonable regulations as may be imposed under Article 156. He is, there

from *prima facie* an alien to a citizen, and the granting of a census, therefore, appropriately be described as a privilege. *Mohrside* *et al*'s case is not, therefore, in my view of consideration the determination of the main question which arises in this case.

It is common ground that in this case the petitioner was not afforded an opportunity of being heard. I would, on that ground and for the reasons which I have endeavored to state, hold that the order of the Licensing Authority, even though it be an administrative order is one which we would qualify in the exercise of our power under Article 235. I can see no harm which would happen in the Licensing Authorities from hearing the person before they subject him to a disadvantage so grievous as the loss of his right to carry on business and if I may adopt the words of *Ex parte C. J.*, in *Cooper's* case I can observe a great many advantages which might arise in the way of public order in the way of doing substantial justice, and in the way of fulfilling the purposes of the state in, by the restriction which we put upon them, that they should hear the party before they reflect upon him such a heavy loss.

In the view I take of the petition, it is unnecessary for me to express an opinion on the other points which were examined before us.

The petitioner is in my opinion entitled to his census which I would fix at Rs 250.

Sarkar, J. —<sup>14</sup> I am agreeing with the order proposed by my brother MOONCHAND. I would fix, as point one that, having regard to the nature of our Constitution, a license for the carrying on of a business or profession cannot be looked upon as a mere privilege which is within the unfettered discretion of the Executive Authority empowered to grant it. Particular emphasis has been laid in Article 19(1)(g) on the right to practice

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my profession or to carry on any occupation, trade or business subject, of course, as laid down in Article 27(4), to an reasonable regulation in the interests of the general public to may be placed on it. In exercising my this right, the founding Fathers were, no doubt, influenced by their concept of the Institution of the State as is clear from the doctrine principles of State policy in which I think it is permissible to refer to this one source they were establishing a State guided by certain directive principles, which though not justiciable were nevertheless to be fundamental in the governance of the country, it being its duty to apply them in making laws. For their vision in Article 18 that the State shall try to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social economic and political shall inform all the institutions of the national life the founding Fathers went on in Article 27(4) to lay down that the State shall in particular direct its policy towards securing that the citizens men and women equally have the right to an adequate means of livelihood. A reform in terms of justice as against other than those which the lawmaking authority can legitimately take into consideration can deduce and justify, in the case of a housewife, her own husband and dependant upon the means of earning her livelihood. Necessarily, therefore, a reform of this power can flow from the very purpose of the welfare State embodied by the Constitution of this Country. I would like to emphasize that it is necessary to keep this background in the forefront represent the political philosophy underlying the constitution as well as considering the question raised by this application.

Now when we the main facts of this case. In 1948, the applicant applied for and was granted licence in Form





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1952. Again, he received a notice from the District Supply Officer that the District Magistrate had referred to him an application. The content of the notice is as follows: "By you and your first appearance. The District Magistrate further directed him to request his business activities for length and during his work at work within three days of the receipt of the notice. On the 4th December 1952, the applicant informed the District Supply Officer that the applicant had stopped his business activities and supplied him with the details of the amount of stock in his hands. On the 10th December 1952 the applicant received a letter from the District Supply Officer directing him to transfer his stock at work to a licensed cloth dealer. The stock was as ordered by the District Supply Officer, with transferred between the 7th December 1952 and 14 January 1953. After some time in the applicant to find out from the District Magistrate the reasons for his refusing to renew the licence. It is stated in the affidavit that he has been three or four times in the courtroom and given his statement in the fact that the applicant had never indulged in any quasi-mercantile activities nor had he concerned with the relevant control orders."

Now it is important to note that according to the affidavit filed by the petitioner the District Magistrate refused to see him with any particular purpose, the reasons for his refusing to renew the licence without previously affording him any opportunity to explain the facts allegations against him and merely told him that the applicant was free to take the matter to the High Court even as he had done previously. The District Magistrate with whom he had then talk having been transferred the applicant presented an application on the 14th January 1953 to the District Magistrate

who had succeeded him setting out the facts of the case and saying that the order cancelling his license be reconsidered. The new District Magistrate responded by stating to alter the order made by his predecessor. I am not impressed with the argument that the content of the talk in paragraph 22 of the petitioner's affidavit is somewhat different from what is said that the case given in paragraph 14. The statement whenever it occurred, must have been within the knowledge of the then District Magistrate. The impression should not have been allowed to be created that the District Magistrate looks upon an approach to the Court as something reprehensible or embarrassing on the part of those affected by his orders. In the circumstances of the petitioner's case it was an obligation on the part of the State to remove the impression created by the petitioner's affidavit. It cannot be said that the then District Magistrate could not be contacted for the purpose. The being the position I am bound to assume that, having regard to the fact that it has not been demonstrated by any statement, as a proper counter affidavit. The version given by the petitioner of his talk or talks is substantially correct. That being so I am driven to the conclusion that reasons which were not relevant as a consideration of the petitioner's petition for the removal of the license were not absent from the minds of the authorities refusing the license. On these facts, I am inclined to the view that the refusal to grant the license was not influenced by considerations which can be said to be of a bona fide nature. In the affidavits filed on behalf of the petitioner it is stated that on his asking him as to why the license was not being renewed and he was being discontinued again, he was told that it was because he had dared to question the order of the Court. It is true that there is not the applicant's

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Mr.  
J. W. Brown,  
Minister  
Proctor  
Hon. J. W. Brown,  
P.C.  
Hon. J. W. Brown,  
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Hon. J. W. Brown,  
P.C.  
Hon. J. W. Brown,  
P.C.  
Hon. J. W. Brown,  
P.C.

statements without any indication of the date when the conversations took place in the affidavit to support the statements which has been introduced in the District Magistrate's brief is so insignificant as to be of no value in the context of the affidavit which has been filed on behalf of the District Magistrate by a Clerk-In-Charge in the office of the District Supply Officer. An statement that the letter had been cancelled in the petitioner had failed to approach the High Court on a petition against his not been refused. It was possible for the State to file a counter-affidavit of the then District Magistrate to refute the statements which go to suggest that perhaps the District Magistrate was not allowed to issue orders in all cases for cancellations not relevant to the consideration of the petitioner's application for the removal of the letter. This has not been done. It may well be that the fact that he had approached the Court and obtained a writ order when his letter was cancelled was not the only option available to him as the decision was in favour of his letter as concerned. But in the absence of a counter-affidavit on behalf of the State I am bound to attach importance to the statement of the petitioner and to the statements in the various paragraphs 22 and 24 of the affidavit as the statements made on this behalf by the petitioner in his affidavit. On the basis of the facts set out above I am driven to the conclusion that perhaps the refusal to issue the letter was influenced by the circumstance that the applicant had when his letter was cancelled, stated when was apparently not coming to the Executive Magistrate to a writ but right to coming to the Court and seeking an amendment in giving the order of cancellation issued. Indeed it is the Court does not interfere with administrative action, where there are reasons to think that the order has been influenced by extraneous considerations. The Court



facta (Massachusetts and Minnesota in 11) under the observations covered below.

It is difficult to appreciate this. Such a argument that Directions, orders or writs can arise only in the circumstances in which the writs named specifically can arise because that argument, if accepted, would go towards the negation of the words themselves, arising as they do to render them useless. It is commonplace that effect must be given to each provision of a statute: no word should be regarded as a surplusage unless that would lead to an absurdity. No statutory words become of the consequence to place on the words.

After emphasizing that the power contained by Article 226 was discretionary, the court went on to add that the power is:

It would, therefore, not be an argument in right to read literature, as the work, given, conferred by, the general words used therein, merely because those words are followed by some specific words, which those + restricted power, since so when the article provides, that the power conferred by the specific words is included in that conferred by the general words. The argument, therefore, that our power is limited in the covering of the specific words, only may fail.

I would add that I am in complete agreement with the above view.

Finally I would refer to the case of *Eastern Atlantic Monopoly Board of Kansas* (1) In that case the Supreme Court granted relief to the petitioner who had complained that the Monopoly Board, Kansas U. P. had granted a monopoly of wholesale transshipments to a third person with the result that the Board had become powerless to grant a license to the

personnel there being concerned is to be law under which the Board could grant a license. The personnel are carrying on a wholesale business in cognitation before the non completion of work done. On the above facts the personnel who had been prohibited from carrying on his business filed a petition under Article 32 before the Supreme Court for the enforcement of his fundamental right of trade under Article 19(1)(g). The Supreme Court allowed the petition and made the following observations:

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The points given to the Co-1 under Article 10 are much weaker and are not confined to a single, reasonable view only.

The Supreme Court passed an order directing the Municipal Board not to prohibit the passengers from carrying on the trade of wholesale dealers at within the limits of the Municipal Board Kuaran.

On the basis gathered from the affidavit, the company advised and the affidavit, on September 12, and on the strength of the information which attention has been issued about 1 hour came to the conclusion that the Coast should issue (a) an order quashing the order of the District Magistrate, Karpot, declaring to remove the license of the petitioner, and (b) a direction to revoke the evidence on the water.

For the reasons given above, I concur in the order submitted to be made by my brother, Mr. Stewart.

By 1903 Governor Theodor of the Emperor Magistrate Kampen ordered to review the petitioner's license for the year 1902-03 as granted and a writ in the matter of residence was sent to the District Magistrate, Kampen directing him to consider the application of the petitioner for the renewal of his license as to status. The petitioner is now held as he was, which was fixed by 1906 under accordingly.

**Figure 6**

## FULL BENCH (APPELLATE CIVIL)

Before: Mr. Honorable R. Nathaniel Chief Justice,  
 Mr. Justice Appellate and Mr. Justice Birmingham  
 (HON. J. C. F. DEVI (Plaintiff))

VS

34311432, B. L. T. 12511111 (Defendant)

Under Plaintiff (Temporary) Accommodation Regulations Act  
 (Act of 1957)

The main regulation of the accommodation regulations in 1957  
 on 2nd Dec. 11 of the National Institute of the Government of  
 India Act 1957 do not include the right to temporary accommodation  
 property under section 1 of the Accommodation Regulations,  
 Act and the Act cannot be engaged in this regard.

Court has decided

Exemption Second Appeal on 1957 of 1954 Court's  
 decree of R. P. Gupta, J. Civil Judge of Morad  
 dated the 10th March 1958

The facts appear in the judgment

N. S. Singh for the appellant

S. A. Dhillon for the respondent

The judgment of the Court was delivered by

Justice C. J. — This appeal has been filed on behalf  
 of Ramdas Singhania (Deo) plaintiff decedent, holding the  
 title of a shop-keeper, holding the 1st position,  
 son of Motar. The defendant S. A. Dhillon Singh  
 is a refugee from Punjab and the plaintiff was a  
 shop-keeper. On this allegation she filed a suit for her  
 possession and it was decreed on the 11th of October  
 1958. She put the decree into execution but before  
 the defendant judgment-debtor could be expelled he  
 filed an appeal and got a stay order. In the meantime  
 on the 11th of December 1958 the Government of  
 Rajasthan requisitioned the shop under section 1 of the U. P.  
 (Temporary Accommodation Regulation) Act (No.  
 100 of 1957). After the requisition order the plaintiff



Magistrate charged to have taken possession of the shop. He thereupon gave the shop up to another Bahadur Singh on rent. The order giving the shop to another Bahadur Singh is dated the 14th Nov. 1948 while the original requisition order is dated the 11th of December, 1948. In spite of the requisition order the licensee holder continued to proceed with the execution application on the ground that the requisition order was annulled and the licensee holder was entitled to execute his decree upon the defendants and take possession of the property. This contention prevailed with the executing court which granted the execution application and directed that the defendants judgment-debtors shall hand over the possession of the property to the licensee holder. The judgment-debtors appealed and the appeal was allowed by the learned Second Civil Judge at Meerut on the 14th of March 1951. Against that order the execution court appeal was filed. It came up before a learned single Judge who was of the opinion that one of the points raised raised consideration by a Bench Bench and he therefore referred the case for decision by a Full Bench.

The first point which was taken before the learned single Judge and has been argued before us is, some length is that as to far as the U. P. (Drugs and Medicines) Regulation Act (amendment) called the Act purported to affect property owned within the territorial limits of the Province of Uttar Pradesh. The other point raised is that the Act had ceased to be operative on the 11th of September, 1948 and therefore the requisition order dated the 11th of December 1948 was illegal. A third point raised that the shop could not be requisitioned as it was in the possession of the judgment-debtors, was overruled by the learned single Judge and though learned counsel raised that point before us he was not able to explain how the District

App.  
Magistrate  
Order  
in  
Execution  
Application  
dated  
11.12.48



things would work themselves out, there being the possibility that the office would continue for a longer period and a control for a longer period might be necessary, the Legislature gave the U. P. Government the power to make a notification and it provided that if a notification was issued, then the Act would remain in force for a period of two years from 1st October 1947.

Learned counsel has urged that this is delegated legislation which is not permitted and therefore that the expiration of one year the Act must be deemed to have become inoperative. Reference was made to the decision of a Full Bench in *Ram Kishore v. State* (1) which was based on a decision of the Federal Court in *Jatindra Nath Gupta v. Province of Bihar* (2). Yet another may have been the position at the time when those cases were decided, the law has since then been clarified by two recent decisions of the Supreme Court. In re Article 143 Constitution of India and *Datta Laxmi Agar* (1950), etc. (3) the learned judges went in detail into the question of the extent to which delegation of legislative function was permissible and that case has now been explained by a recent decision of the Supreme Court in *Pratap Singh v. Chairman, Panchayat Samiti, Maheswar Committee, Panna* (4). At page 373 the various positions that arose in the *Datta Laxmi Agar* Case and the decision therein were summarised. The first two positions mentioned in their Lordships' report—

(1) Where the executive authority was permitted, at its discretion, to apply without modification (save incidental changes such as name and place) the whole of the Central Act already in existence in any part of India under the legislative stamp of the Centre to the new area.

THE  
LEGISLATION  
OF  
INDIA  
1947-50  
PART II  
1948

(1) 1 L. J. 8 (1947) F. 44, 207. (2) 1 L. J. 8 (1947) F. 44, 207. (3) 1 L. J. 8 (1950) F. 44, 207. (4) 1 L. J. 8 (1950) F. 44, 207.

(a) Whether the Executive authority was allowed  
 to select and apply a Provincial Act as an *en* *dis* *en*  
 equivalent.  
 It was held by the majority that it was permissible for  
 the Legislature to confer the Executive authority to  
 apply the Act as was seen from further on paragraph  
 10. In the case before us, the Legislature has permitted the  
 Executive authority to apply the Act as the whole of  
 Part I of the Act as it is. A Legislature may  
 pass an Act for a definite period or an indefinite period.  
 Here the Legislature passed the Act for two definite  
 periods, either one year or two years depending on the  
 circumstances prevailing at the end of the year. The  
 Provincial Government was left merely to decide the  
 question whether the situation had or should be the  
 Act was no longer necessary, in which case they would  
 not issue the notification. We do not think that this  
 can be classed either as delegated legislation or as dele-  
 gation which was not permissible. The point that  
 has now to be decided upon is the application.

The other point raised by learned counsel now is  
 the Act. In the Seventh Schedule Part I entry no  
 2 of the Government of India Act 1953 the Federal  
 Legislature had been given the power to legislate with  
 reference to the regulation of basic commodities (as  
 such were then known). Learned counsel has  
 urged that the Act regulates basic commodities as  
 essential goods and, therefore, it should have been  
 passed by the Federal Legislature and not by the Pro-  
 vincial Legislature. He has relied on section 100 of the  
 Government of India Act which refers to the  
 production of the Provincial Legislature with reference  
 to one of the matters enumerated in List I in the  
 Seventh Schedule. The question therefore for deci-  
 sion is whether the words "the regulation of basic

accommodation within the Commission were include  
 requirement of history within the Commission areas. In  
 other words whether the word "regulation" is wide  
 enough to include "acquisition" in this context. Before  
 we deal with this point, we may point out that there  
 is a decision of the Hon'ble J. of the Bombay High  
 Court in *Tan Bui Tin v. Collector of Bombay* (11  
 where the learned Judge observed that regulation was  
 a distinct and separate category of legislative powers  
 and regulation of property was not covered by or  
 included in any entry in the three lists contained in  
 the Seventh Schedule of the Government of India Act  
 1935, and that the Central Legislature was not com-  
 petent and had no authority to legislate in respect  
 thereof. Whether it was by reason of this decision  
 or for any other reason the Governor General acting  
 under section 104 of the Government of India Act  
 issued a notification dated 21st of October 1947 which  
 was published in the Gazette of India Extraordinary,  
 dated the 30th of October 1947 and this notification  
 reads as follows:

In exercise of the powers conferred by section  
 104 of the Government of India Act 1935 as adap-  
 ted by the India (Provincial Constitution) Order  
 1947 the Governor General hereby empowers all  
 Provincial Legislatures to enact laws with respect  
 to the requirement of land being a matter not  
 enumerated in any of the Lists in the Seventh  
 Schedule to the said Act.

Learned counsel has urged that this notification is of  
 no avail as the Governor General could only issue a  
 notification empowering the Federal or Provincial Legis-  
 lature to enact laws with respect to any of the mat-  
 ters enumerated in any of the Lists in the Seventh  
 Schedule and the Federal Legislature had the power

the  
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 entry 57

1949  
 (1950)  
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 (1952)  
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 (1956)

under entry no. 2 of List I of the Seventh Schedule to enact laws for the regulation of houses in emergency areas. We have therefore to consider whether in view of the entry no. 2 List I of the Seventh Schedule of the Government of India Act, 1955 the Federal Legislature had the power to legislate for regulation of houses in emergency areas and in that case, in spite of the notification the State Legislature would have no such power with respect to the emergency areas.

Learned counsel has submitted a statement of a Bench of this court in *Munimul Ahmed Begum v. District Magistrate of Ajmer* (1). In that case the District Magistrate of Ajmer had requisitioned a house under section 3 of the U. P. (Temporary) Accommodation Regulation Act, 1947 the house being situated within the limits of the Ajmer Cantonment. Reliance was placed on entry no. 2 of List I of the Seventh Schedule of the Government of India Act, 1955. It was held by the learned judges that the Provincial Legislature had no jurisdiction to make any emergency with regard to that matter affecting matters covered by entry no. 2 of List I of the Seventh Schedule of the Government of India Act, 1955. On behalf of the District Magistrate no argument was advanced that requisitioning of house accommodation did not include the power to requisition under section 3 of the Act. The point was made on facts conceded in the Bar and it was therefore not considered by the Bench.

The other case *Ramesh Das v. The State of U. P.* (2) to which reference has been made in the foregoing order is also by learned counsel, does not seem to be of much assistance. In that case a house was kept in the

Madras city with respect to which the Rent Control Officer had passed an order under section 7 of the L. P. (Temporary) Control of Rent and Eviction Act (No. III of 1947). The argument advanced by learned counsel was that the Act had been passed before the notification of the Governor General mentioned above was issued and the power of allotment given under section 7 to the Rent Control Officer amounted in effect to requisitioning of property. It was held that the power to make an allotment under section 7 of the L. P. (Temporary) Control of Rent and Eviction Act was neither a requisitioning nor requisitioning of property and the Act came under entry no. 31 of List II of the Seventh Schedule of Government of India Act 1935. This case was followed by a Bench of the Court in *Prem Mohan Pandey v. L. P. Provincial Co-operative Bank Ltd.* (7) in which the learned Judge said:

Controlling the letting of buildings does not mean a interference on the right of the owner about not letting the building but such a compulsion to let a building cannot amount to requisitioning the building. The Government does not get possession of the building and then deal with it in any manner it likes.

Learned counsel has referred us to the meaning of the word *regulate* in Shorter Oxford Dictionary, at page 1822 but the meaning given in the dictionary does not support the contention of the learned counsel that regulation of accommodations means requisitioning of property. The dictionary meaning of the word is as follows:

*regulate*—To direct or govern in strict or regular order, subject to guidance or restrictions, to

page 1 & 2 of 10

that  
Bengal  
1951  
in  
L. P.  
Bengal  
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vol. 2, p. 4

advice to apprehend him or surrounding him, to bring or induce a person or body of persons to order.

In two recent decisions of the Supreme Court, *Nat. of Hosiery v. Mathur* (1) and *Drishkadi Shrinani v. The State of Mysore and Hosiery Co. Ltd.* (2) the meaning of the words "apprehension and requisition" and how far "apprehension" and "requisition" include requisition for the purposes of Article 31 of the Constitution have been discussed at some length. Those cases, however, are not of much relevance to the appeal as their Lordships were not called upon to consider the meaning of the word "seizure" in entry no. 2 of List I of the Seventh Schedule of the Government of India Act, 1953. They held that it is wide enough to include apprehension and requisition of property.

So far as the property inside the customs house is concerned, we have got the U. P. (Temporary) Control of Rent and Eviction Act (No. 31 of 1947) which gives the District Magistrate the right to control the manner in which houses shall be let out to the landless in the tenancy. The District Magistrate under that Act has no power to requisition the property or to requisition the property; he can only direct to whom the property is to be let out and on what terms. In the customs house an Act containing similar power is the U. P. Customs (Control of Rent and Eviction) Act (No. 11 of 1952), which was passed by the Central Legislature. It gives the officers concerned with the custom the same powers with respect to access and egress in the customs area which the District Magistrate has under the U. P. Rent Control and Eviction Act with reference to house accommodation inside the customs house.



An examination of the various entries in the List in the Constituent tables, it clear that regulation of basic accommodation was not provided and could not include acquisition or requisition of property. In List I of the Seventh Schedule the power to make laws for the purpose of regulation is mentioned in the following entries:

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Entry no 3—for regulation of house accommodation.

Entry no 43—for regulation and winding up of trading corporations.

Entry no 44—regulation and winding up of corporations whether trading or not.

Entry no 53—regulation and development of oil fields and general oil resources.

Entry no 64—regulation of mines and mineral development.

Entry no 76—regulation of labour and safety in mines and oil fields.

Entry no 78—regulation and development of inter State rivers and river valleys.

Entry no 88—acquisition or requisitioning of property for purposes of the Union.

Similar result would follow on an examination of List II of the Seventh Schedule. The power of acquisition or requisitioning of property in this List is given in entry no 18. Entry no 18 of List II deals with land, that is to say rights in or over land, land resources including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land, land improvements and agricultural loans, colonization. Entry no 27 deals with regulation of mines and mineral development. Entry no 32 with regulation and winding up of corporations, other than those specified in List I and universities etc.

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When a property is requisitioned by the Government, all that the person in possession of the house is deprived of is the actual physical possession thereof and not the legal right which had entitled him to remain in possession so that when the requisitioning order is withdrawn, it is only necessary to restore possession to the person from whom it was taken but in the case of requisition a right is required by the State and if the right, title or interest acquired is no longer needed it has to be legally transferred or otherwise it is decided to give the right title or interest. Requisition only means that the rights of the owner or the person entitled to possession are restricted and controlled by the requisition authority, the State Government neither acquiring possession nor the right to possession.

It is, therefore, that while in the case of requisition or regulation the State has to pay compensation for what the State has acquired in the case of 'regulation' of house accommodation no compensation is payable obviously because no right in the property was acquired or got vested in the State. If the fundamental difference is borne in mind and if the word 'regulation' is interpreted so much so probably it was intended to mean that the District Magistrate will only control, restrict and direct how accommodations shall be let out on what terms and to whom when it is not possible to include in the word 'regulation' the right to restrict even in the right of acquisition of such accommodations for the purposes of the Government or for any other public purpose. In any case therefore, the words 'regulation of house accommodation' in entry no. 2 of List I of the Seventh Schedule of the Government of India Act, 1953, do not include the right to requisition the property under section 3 of the U. P. (Temporary Accommodation) Requisition Act, 1945 and the Act cannot therefore be engaged on this point.

In the end learned counsel for the appellant was pointed out that the way was brought for recovery of a judgment as the judgment-debtor had successfully taken possession of the shop and we should, therefore, make it clear that the shop in question belongs to the plaintiff & that the legal possession in the property was in the plaintiff and that it is from the possession of the plaintiff that the Collector requisitioned it on the 18th of December 1948. As a matter of fact the order under section 5 dated the 18th of December 1948 specifically mentions that the property was being requisitioned from the plaintiff Bhagwan Devi. Under section 5 of the Act the Collector is bound to return the accommodation requisitioned under the Act to the person from whom it was requisitioned. The decree-holder is therefore entitled to get formal possession of the land to satisfy the judgment-debtor but she will not be entitled to get actual physical possession of the shop so long as the order of requisition issued by the District Magistrate remains in force. When the District Magistrate releases the property he shall return it to the plaintiff decree-holder Bhagwan Devi from whose possession he requisitioned it. As S 5 does not appearing for the judgment-debtor has no objection to this part of the order.

The result therefore is that this appeal is allowed in part and the order of the lower court is modified as indicated above. The executing court shall now proceed to deliver formal possession of the property in the manner indicated above but the decree-holder will not be entitled to get actual physical possession of the premises so long as the judgment-debtor so long as the order of requisition is not withdrawn. We make no order as to costs of this Court.

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HIGH COURT  
1948  
VOL. C. 2

1934  
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Judgment  
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Judgment  
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Leave and counsel for the appellants has asked for leave to appeal under Article 112 read with Article 114 of the Constitution. The leave asked for is granted.

*Appeal partly allowed*

### FULL BENCH (APPELLATE CIVIL)

*Before the Honourable B. N. Chatterjee, Chief Justice, Mr. Justice Sengupta and Mr. Justice Bhattacharya*

RAHMAT ALI FATEH ULLAH (Plaintiff)

v.

1934  
—  
Judgment  
1934  
—

CALCUTTA NATIONAL BANK LIMITED  
(OPPOSITE PARTY)

*Indian Companies Act, 1913. 171. Petition submitted by a Company.—Appeal—Appellate in nature of appellate powers—Leave to Company Judge to be allowed if necessary.*

Where a winding up order is made in respect of a company after it had obtained a decree in a suit filed by it and after an appeal preferred by it against the decree allowing defendant's objection under section 17 of Civil Procedure Code had been allowed on application the leave of the District Judge of the appellate court being not a legal proceeding commenced against the Company within the meaning of section 171 of the Companies Act can be made by the defendant without obtaining leave of the Company Judge.

*Case law discussed.*

Reversal application in First Appeal No. 18 of 1913.

The facts appear in the judgment.

*Shankar Prasad, for the petitioner.*

*S. N. Sarkar, for the opposite party.*

The judgment of the Court was delivered by—

*MAJUMDAR, C. J.*—On a reference of opinion between brothers Dutt and Ray Majumdar gave the following view of law as delivered in a larger bench for decision.

Where a winding up order is made in respect of a company after it had obtained a decree in a suit commenced by it and after an appeal preferred by it against an order allowing defendant's objec-

been under section 17, C. P. C. had been decided, and an application for review of the above-mentioned judgment of the appellate court be made by the defendant, without obtaining leave of the Company Court under section 171 of the Indian Companies Act (VII of 1912)?

That  
 Section 171  
 of the Indian  
 Companies  
 Act (VII of  
 1912) does  
 not apply.

It is not necessary to set out the facts in detail. All that we need mention is that the Calcutta National Bank Ltd. had brought a suit against Qudratulla and his son Rahmat Ali Fardulla for recovery of a large sum of money on the allegation that the principal debtor was the father and the son had guaranteed repayment of the debt. During the pendency of the suit the bank had applied for and had got certain assignments attached before judgment. Rahmat Ali Fardulla had claimed that these assignments belonged to him exclusively, and that he had been carrying on a separate business. The objection to attachment of the property was however dismissed. The learned Judge ultimately decided the suit against the father but on a finding that it had not been proved that the son was a guarantor the suit against Rahmat Ali Fardulla was dismissed. When on execution of the decree the bank proceeded to sell up the assignments which had been attached, Rahmat Ali Fardulla filed an objection to the execution court claiming the property to be his own. He also filed an application in the suit that since the suit had been dismissed against him the assignments before judgment need not be charged on the property had belonged to him. Both these applications were disposed of by the same order, the decision being in favour of Rahmat Ali Fardulla. The bank filed an appeal which was allowed by a bench of the Court. After the appeal was allowed an order was passed by the Calcutta High Court winding up the bank. Thereafter an application was filed for review of which notice

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was made and, when it came up for hearing, a post-natal obligation was taken that no review application could be filed without the sanction of the Company Judge under section 171 of the Indian Companies Act.

Section 171 provides that, after an order for winding up is passed, no suit or other legal proceeding shall be commenced or continued against the company without the permission of the Company Judge.

The words of the section appear to be simple enough but a great deal of argument has been advanced to expand their cover meaning. One view which has appealed to brother [Mr] Justice Ladd, and for which there is some authority, first is if a suit is filed by a company after later proceedings in that suit are set aside proceedings against the company but no defence was taken by the defendant who has been called upon to defend a suit filed by the company itself. If this view is accepted then the word 'suit' would mean everything connected with a right up to the 'set-aside'. For example, if a suit has been filed by a company even though the later proceedings may have been set aside by the other side they are not other proceedings against the company in other words, if the suit was directed by the trial court and no appeal was to be filed by the defendant or if the winding up order then that appeal would be supposed to be a continuation of the suit itself and not a proceeding against the company. But a defence taken in the suit filed on behalf of the company.

The other view taken by brother Deane, and for which there is some authority, is that the critical date is the date of the winding up order and one has to see who is the party who started the proceedings pending on that date. For example, if a suit was filed by the company and the suit was directed after the winding up order, then the defendant can file an appeal and not

the permission of the Company Judge as on the date of the winding up order there was no proceeding against the company, but the proceeding pending was the suit filed by the company itself. If on the other hand the suit was decreed before the winding up order and the defendant has to file an appeal at once, the appeal already filed, then permission of the Company Judge under section 171 is required.

Section 171 does not bar the institution of subsequent suits of a civil or other legal proceeding by the company, but against the company. Some difficulty has arisen with regard to the meaning of the words 'other legal proceeding'. They have been interpreted in some cases to mean 'other original proceedings like a suit in the court of first instance'.

In *Bowman Bank Ltd v. Sathubhusan Mook (I)* (1909), 140 I. and M. 117 (P.) followed the view of TILGHMAN, J. in the *First Bank* decision of the Lahore High Court in *Srinani Sankarnath v. Poojee Bank of Srinagar*; *Andhra Ltd. v. Andhra* through *Eluganathan*, Official Liquidator (2), ibid.

This expression 'legal proceeding' in this section (section 171) is coupled with suit and obviously means proceedings equivalent to suit, that is to say original proceedings in a Court of first instance analogous to a suit initiated by means of a petition similar to a plaint. It does not include proceedings taken in the course of the suit nor proceedings arising from the suit and continued in a higher Court like an appeal from an interlocutory or final order passed in the suit.

The other view which was taken by BAKER, J. in *Pranajay Kumar Singh v. Bowman Bank Ltd. Srinagar* (in liquidation) (3) was that an appeal or a revision can be treated as a legal proceeding. The same view was

1909  
Srinani Sankarnath  
v. Poojee Bank  
of Srinagar  
Andhra Ltd.  
v. Andhra  
Eluganathan  
Official Liquidator  
(2), ibid.

(1) 140 I. and M. 117 (P.). (2) 140 I. and M. 117 (P.). (3) 140 I. and M. 117 (P.).





and the general scheme of administration of the assets of a company as legislated laid down by the Act. In particular, we would refer to section 334. Section 332 appears to us to be supplementary, viz. to section 331 by providing that any creditor (other than Government) who goes ahead not withstanding a winding up order or in spite of it, with any attachment, distress, execution or sale, without the previous leave of the Court, will find that such steps are void. The relevance to *Sharma* indicates that leave of the Court is required for more than the initiation of original proceedings in the nature of a suit in an ordinary Court of law. Moreover the scheme of the application of the company's property as the joint joint satisfaction of its liabilities, envisaged in section 311 and other sections of the Act, cannot be made to work in co-ordination with all creditors (except such secured creditors as are outside the winding up) on the basis indicated by Lord Wilberforce in his speech in *Foot & Martin v. Case* (1) are subject as to their claims against the property of the company to the control of the Court. Accordingly in our judgment, no narrow construction should be placed upon the words "or other legal proceedings in section 331". In our judgment, the words can and should be held to cover distress and execution proceedings in the ordinary courts. In our view such proceedings are other legal proceedings against the company as contrasted with ordinary suits against the company.<sup>1</sup>

In view of the observations of Sen, C. J. in *Sharma Sugar Mills* case it is no longer necessary to refer to various decisions in which a contrary view was taken as to the scope of section 331.

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THE  
COMPANIES  
ACT  
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SECTION 10

Since, however, they were filed at the Bar, we may briefly refer to them.

In *Mahon Bank v. Peoples Bank of India* (1) it was held that a revision application filed against a company was not legal proceedings and it was not maintainable without the permission of the Company Judge. The same was overruled in *Ashok Singh v. Bank of India* (2) where it was held that an appeal or an application for revision against an order passed in a proceeding initiated by the company did not come under section 171. Reference was placed on a case of the House of Lords in *Manchester v. Grafton* (3).

In *Jain Dev v. Peoples Bank of Northern India* (4) it was held by JUDGES and DE. MURTHU (5) that an appeal brought by the company was appealable and could be filed without the permission of the Company Judge.

The same view was taken in *Tax Cases* (6) in *Sanki Banking and Industrial Co. Ltd. v. State of India* (7) and *State Trading Co. Ltd. v. Calcutta* (8).

In *Mervan Shikhar v. Peoples Bank of Northern India Ltd.* (9) the same view was affirmed on a different interpretation of the words "legal proceedings". It was held that "A suit under Order 21 Rule 64 against a company in liquidation being a suit within the meaning of section 171 Companies Act cannot be commenced without the leave of the court which had ordered the winding up."

In *Benares Bank Ltd. v. Unitedbankers Union* (10), MURTHU J. dissented from the view expressed by DE. MURTHU (5) in *Rajul Raj Kumar Singh v. Benares Bank Ltd.*, Benares (an application) (11) and proposed to follow the observations of Tax Cases (6) in

(1) 1 L. J. 3, 1954 L.A.C. 41  
(2) 1954 L.A.C. 100  
(3) 1 L. J. 3, 1954 L.A.C. 100  
(4) 1 L. J. 3, 1954 L.A.C. 100

(5) 1 L. J. 3, 1954 L.A.C. 100  
(6) 1 L. J. 3, 1954 L.A.C. 100  
(7) 1 L. J. 3, 1954 L.A.C. 100  
(8) 1 L. J. 3, 1954 L.A.C. 100



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UNITED STATES  
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PART 1  
1908

commenced by a person with the object of escaping liability among one of a proceeding commenced by the company itself. It would probably be useful to clarify the position a little further. If a person wants to file a suit to escape liability on one ground, then the case puts a claim against him is unfounded. It is not proceeding against the company, but where the company has started the proceeding, then it, put forward as, then as a court of law, any remedy available by way of defense to escape liability, which the company wants to have on him should not be deemed as to be a proceeding commenced or continued against the company and in such a case the question, whether the claim was preferred or the suit was filed by the company, before or after the winding up order, should make no difference.

(1), Lord Brough and

It was the respondents who themselves proceeded with the action after the winding up order, by prosecuting their appeal in the Court of Appeal, and when once an action by the company itself has been proceeded with, there is no necessity for the defendants, as that action is already over for any defense proceeding on that part.

Further, J. distinguished these circumstances and said that there is a case where the action had been taken by the company and proceeded with after the winding up order. As Lord Brough was merely stating the facts of the case before him, he should not be understood to have meant that if the appeal had been filed and proceeded with by the company, before the winding up order, his decision would have been the other way.

This appears to me to be the just and proper way of

such a case as the company which wants to enforce the liability, while the person against whom such liability is maintained is to be enforced, is a legal proceeding pending, in a court, tends to escape the liability. Sections 140 and 141 proceedings under the Companies Act are for making available the assets of the company in just and satisfaction of its liabilities, and if persons other than secured creditors are allowed to enforce their claims without any control exercised by the Company Judge it may defeat or delay that object. But where a company has obtained a proceeding in a court of law, whether before or after the winding up order, no permission of the Company Judge should be needed for anything done by the defendant or the opposite party to escape the liability thus intended to be enforced on him. If however the proceedings in a court of law are started by a person other than the company either with the object of enforcing a liability on the company or with the intention of escaping a liability in respect of a claim which has not been brought into Court by the company itself, the permission of the Company Judge is required for the institution or the continuance of the proceedings. For instance, if a person files a suit for a declaration that the company owes to him a certain sum of money, or that he does not owe the company any sum of money, the permission of the company Judge is necessary. If however the company has instituted a suit or other proceeding to enforce a claim, any action taken by the defendant or the opposite party by way of defence or if the company has obtained a decree or order, any defence taken by way of appeal, revision, return or setting aside of an ex parte decree or order should not require the permission of the Company Judge. If the proceedings have been instituted or continued on behalf of the Company after

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the winding-up order according to the view taken by  
Brett, J. the subsequent proceedings by way of  
debate would arise under the rule laid down by Lord  
Brett. There does not appear to me much probability  
to the learned judge so he very good reason for  
coming to the conclusion that the result should be  
otherwise where the proceedings had been initiated  
and continued by the company before the winding-up  
order specially in order within 171 of the Companies  
Act the company is not required to effect the proce-  
dure of the Company Judge for the constitution of the  
committee of a legal proceeding.

In our view, therefore, as it is like the present  
where the company has obtained a decree for winding-  
up and has then been allowed by reason of some  
error apparent on the face of the record to set a legal  
proceeding commenced against the company within the  
meaning of section 171 of the Indian Companies Act  
and in favor of the Company Judge was necessary.

Order accordingly.

## APPELLATE CIVIL

*Major Mr. Justice Engel and Mr. Justice Mueller.*

ASHA DEVI (Plaintiff)

1887  
1888-89

CHAMPA DEVI and others (Defendants)

Indian Contract Act, 1872, s. 74.—*Applies clause in a family arrangement—Further, a penalty—Liquidated damages and penalty distinction between*

It is not the possession of certain immovables and house properties the question was whether the following clause in a family arrangement, entered in between the parties, can be said to be in the nature of a penalty within the meaning of s. 74 of the Contract Act:

If the amount of these arrears becomes due by the first party and the second party does not receive it on any account, she shall have the right to cancel the deed of composition and obtain possession of the house property which she has left in possession of the first party as interest and which is estimated at the time of the deed of composition.

The name of the first party shall be struck off and that of the second party entered in public papers. The first party shall have no objection to it. The second party shall have the right to realize the remaining amount of the fixed annuity with interest, stored from the property of the first party who shall not be liable for the interest so accrued.

While there was no penalty expressed, which amounted along with the contract, but the contract itself was to be dissolved according to the clause on the happening of a contingency. And no party was being subjected to any gross oder for doing because of the default, but on the other hand parties were being relieved in the position in which they were respectively at the time of entering into contract.

Held, further, that the breach of agreement between liquidated damages and a penalty is that the contract of a penalty is a payment of money required in reversion of offending party while the contract of liquidated damages is a genuine re-estimated pecuniary of the damage.

Contract dissolved

THE  
COURT  
OF APPEALS  
IN  
INDIA

First Appeal No. 361 of 1908, from a decree of His  
Honour Mr. Justice of Sahasapur (as he then was)  
dated the 15th February, 1908.

The facts appear in the judgment.

*Shankar Prasad*, for the appellants.

G. S. Peshkar, E. C. Mead, C. S. Senan, S. N. Kanya,  
B. K. Desai and J. N. Telwa, for the respondents.

The judgment of the Court was delivered by—

**MURRAY, J.**—This is an appeal by a plaintiff in a  
suit for possession of certain immovable and house pro-  
perties which were detailed as contents in the file of the  
plaint. The suit which has given rise to this appeal  
arose under the following circumstances:

Kishu Lal and Raghubans Sahas were two brothers  
who owned considerable house and immovable property  
in the district of Sahasapur; they also owned certain  
mortgage rights under two usufructuary mortgage  
deeds of the value of Rs. 12,000. Raghubans Sahas was  
the first to die: he died some time prior to 1901 leav-  
ing behind him son Shrinath Moh and his wife. Kishu  
Lal, the other brother, died in 1901 leaving a widow  
Suman Ahu Devi, who is the plaintiff in this appeal.  
Kishu Lal, before his death had executed a will in  
favour of the plaintiff and it was on the basis of this  
will that she succeeded in getting possession obtained in  
her name in a mortgage deed of the family property.

Dispute, however, arose between Suman Ahu Devi  
on the one hand, and—Shrinath Moh, Raghubans  
Sahas on the other. These disputes, however, were  
amiable, settled by means of a family settlement. The  
instrument which was entered in was recorded in a  
document, which was registered and which in effect  
forms the basis of the present suit. This document



which we shall refer to hereinafter as the family arrangement, was executed by Shambhu Nath and Acha Devi on the 17th of August, 1908. By means of this family arrangement it was agreed that Shambhu Nath was to be the owner in possession of the entire properties including the mortgage debts except a certain house no. 7 and certain other houses mentioned in List A of the list appended to the family arrangement. Acha Devi was also to receive from Shambhu Nath a sum of Rs 25,000 in cash at the time of the registration of the family arrangement, and she was to receive annually a sum of Rs 1,250 as maintenance; this sum of Rs 1,250 was payable by Shambhu Nath in two half-yearly instalments falling due on the 15th of February and the 15th of August every year. The family arrangement also made provision that in the event of three consecutive defaults in respect of the maintenance payable half yearly, the family arrangement was to terminate as in the words of the arrangement, Acha Devi was given—

Page  
482  
Acha Devi  
to  
a family  
arrangement  
dated 17th  
August 1908

The right to cancel the deed of arrangement and obtain possession over the property which she has left in possession of the first party at parties and which is mentioned at the foot of the deed of arrangement.

(These are the words in which the family arrangement has been translated and these words appear in page 35, line 25 of the paper book.)

According to the family arrangement if Acha Devi did not obtain possession over certain property on account of its being redeemed she was to receive a sum of Rs 4,500 in cash with interest at the rate of eight annas per cent per annum from the date of redemption, this allowing a set-off to its extent of Rs 25,000 which was to be paid to her under the





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there was a fairly straightforward case where there had been obtained by fraud and was otherwise not binding. It was further contended that the firm under which the plaintiff claimed to have purchased the mortgage was paid in its entirety and was consequently irretrievable. It was found that there was a further defence which need be raised and that was that the suit was barred by the provisions of the Transferred Estates Act and section 11 of the Code of Civil Procedure. This defence was raised by way of the plea that Suresh Chandra Devi, widow of Shankha Nuth, had filed an application under section 1 of the Transferred Estates Act on the 23rd of September 1931. In this application, Chandra Devi had shown the properties in which claim was being laid to. And Devi to her own properties. It was found that the claimant had a claim to the extent of Rs. 10,000 before the Special Judge at a certain stage of the proceedings there.

The defence of the mortgage followed more or less the same line which was taken by Chandra Devi the widow of Shankha Nuth. The mortgagee, however, raised two more pleas in defence. That they that a defendant 2 to 4 was not liable on the ground of Rs. 10,000 to the plaintiff, inasmuch as the mortgagee mortgage in respect of which the claim of Rs. 10,000 was made had been redeemed. All the amounts claimed possession under section 41 of the Transfer of Property Act, and that the suit was barred by law.

The suit was recorded the following findings on the evidence which was adduced before it:

- (1) That, for the purposes of the case, it was immaterial whether Shankha Nuth was or was not a member of a joint Hindu family at the time of his death.

(5) That there was default in the payment of three successive installments.

High  
Court Error

(6) That none of the transferees made any reasonable or independent inquiry so as to protect them under section 41 of the Transfer of Property Act. The learned trial judge further found that in this case the plaintiff did nothing which could have misled the transferees and believing that their transferee had the right to make the transfer. The learned judge was also of the opinion that section 41 of the Transfer of Property Act was inapplicable in terms, to the facts and circumstances of the present case, inasmuch as, the transferee in this case was not the ostensible owner of the property but was, at the time when he made the transfer, the real owner under the family arrangement.

Specific  
Relief  
Refused

(7) That there was no fraud or misrepresentation of any kind as regards the family settlement and consequently the settlement was binding on the parties.

The trial judge, even though he came to the above mentioned findings in the end, dismissed the suit on two grounds. First, on the ground that the decree or the right settlement by the enforcement of which the suit for possession was filed was in the nature of a private one and consequently could not be enforced. Secondly, the trial judge was of the view that the plaintiff came in for possession as regards to the property which Chicago Dec. had shown to him was in the list of properties appended by him to his application before the Special Judge under section 4 of the Encumbered Estates Act, and as in respect of these properties the plaintiff's suit was barred.

1962  
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Before this case came up for final disposal before us in a *rehearing*, some matters were decided by the Court and we should like to refer to those two matters at this stage. One such question was whether a civil court had jurisdiction to determine a question of title to property which had been shown in a list published under the provisions of section 11 of the Encumbered Estates Act and about which the plaintiff never failed to prove a claim before the Special Judge before filing a suit in the civil court, or preferred the claim after the institution of a suit in the civil court for recovery of possession of such property on the basis of title. The aforementioned question was referred to the Bench before which this appeal came up for hearing on the 21<sup>st</sup> of September 1959 as a Full Bench *in open court*. On the 14<sup>th</sup> of September 1972 the Full Bench decided the question thus:

The Civil Court has jurisdiction to determine the question of the plaintiff's title to the property and we answer the first part of the question referred to this Bench accordingly.

As a result of the Full Bench decision, therefore, the plaintiff's suit for recovery of possession could not be held to be barred under the provisions of section 11 of the Encumbered Estates Act.

The other matter which has been decided is at an early stage is whether the estate appeal filed as a result of the death of Keshambhai Dada respondent no. 3 whose heirs were not brought on the record with in the time allowed by law is legal or not. Since the point that had been decided was that the death of respondent no. 3 Keshambhai Dada leads to the abatement as against the claim to require that respondent alone, but does not mean the vesting of the estate appeal.

This decision, apparently, was based on the principle that, the claim is against the deceased respondent, was repulsive from the claim as regard to the other respondents and that there would be no real inconsistency in the decree that may be made by this Court as against the living respondents with the decree that determined the rights as against the deceased respondent.

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It is not necessary to quote either the exception in the other explanation which is incorporated in the section. It will be observed that in section 74, two types of stipulations are contemplated. First a stipulation to pay a sum of money, and the second a stipulation of damages which shall then and there be in the nature of a penalty. Where parties to a contract mutually agree that in the event of a breach, the one shall pay to the other a specified sum of money, it has hitherto been a question of some difficulty whether such is or is not a sum to be paid in the event of any damage however great or small, which may be incurred by a breach of the contract, or is liquidated damages—that is, is the sum to be paid in that event without reference to extent of the injury actually sustained—and the question is as whether a sum stipulated for in a contract is a penalty or a liquidated damage is for the Court to decide. The fact that the sum is expressly stated in the contract to be a penalty or liquidated damage, is the true test, but is positive proof evidence that is prima facie of that character has, it not conclusive. A distinction has been drawn between liquidated damages and a penalty and the kernel of that distinction is to be found in the fact that the essence of a penalty is a payment of money stipulated as satisfaction of the obligation given, while the essence of liquidated damages is a genuine assessment pro estimate of the damage. Whether a stated sum or a sum that may be definitely ascertainable on the terms of the contract is or is not a penalty can be determined by a court which compares the case submitted to it with the good sense and theory of high value from which principles for such determination can be easily gleaned, but the position in regard to the other stipulations for, say, of getting a corner in stock, be determined because there are not



may decide upon interpreting the scope and the sense of these words.

The clause which is said to be in the nature of a c. 5th in the family arrangement is in these words—

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Witness of

If the amount of three hundred becomes due by the first party and the second party does not interfere it on her account, she shall have the right to cancel this deed of compromise and obtain possession over that property which she has left in possession of the first party at present and which is retained at the foot of this deed of compromise. The name of the first party shall be struck off and that of the second party entered in public papers. The first party shall have no objection to it. The second party shall have the right to receive the remaining amount of the fixed annual rent with interest allowed from the property of the first party who shall not be liable in the future in future.

The said Judge took the view that the right conferred on the plaintiff to recover the arrears of maintenance along with interest at six per cent. per annum, and also the right given to her to obtain possession over that share of the property which she had handed over to Shashib Nath at the time of the family arrangement in the event of the default of three consecutive annual payments of the maintenance money was in the words of a proviso because the word—

in case of payment imposed on Shashib Nath and his successors imposed by non-payment of three consecutive instalments on due dates.

In our opinion, the learned Judge was not right in the view that he took of the clause. In order to make a definite point, the clause and the context must in our judgment be read and that the effect of the 'proviso'

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clause should continue to be effective along with the substance of the contract. A clause in a contract which terminates the contract and places the parties in the same position as which they were before the contract was entered into, could not be said to be a penal clause. There was in this case no penalty being imposed which weighed along with the amount but the contract itself was to be dissolved resulting to the clause on the happening of a contingency. No party was being subjected to any pecuniary liability because of the default, the parties were being subjected to the position in which they were when they originally entered into the contract. In order to correctly judge the import of a clause of a family arrangement one has to look at the family arrangement as a whole, and one has also to look at the intention of the parties, which is to be gathered from the circumstances in which the agreement was made. In this case we find that there was a dispute in relation to the claim of Fokky Lay which was held by two widows, Aohy Dey, the plaintiff, Shengshu Nook who claimed it on the strength of the right of survivorship while Aohy Dey claimed it on the ground that her husband is the son of his death was a separated member of a Hindu family. This dispute was mutually settled by the family arrangement. Aohy Dey giving up her right in possession the property on condition that she was paid a certain specified sum in the case of the extinction of the death benefit and a certain specified sum periodically by way of maintenance. Under these circumstances, it was wrong for Aohy Dey to make a claim that she did not let her management regularly and this in the view of her management falling into arrears the lawyers could be satisfied and she could get possession over the property which she had handed over in consideration of certain regular maintenance. There was, in our opinion,

namely, in the activity of John Deere no subleased nor negative portions of her maintenance which could be turned to account. It was a part of the bargain made the very basis of the bargain and not a term which rendered the bargain and the more difficult of performance on the happening of a certain contingency, or something which had the effect of transferring the liability to the bargain to adhere to the bargain. In my judgment, it was a fair stipulation which placed the parties on an equal footing. For if Shambler had been a more profitable to keep the property in his possession then he had to pay the annual maintenance within the specified time, but if he found it difficult to make the payments within the specified time then he could give up the property and save himself the annual payments.

Cabaran was placed by the learned Judge on the decree of *Munshi Lal v. Ahmed Musa* (1), for the very fact that clause 4 of the family arrangement was in the nature of a penalty, which the meaning of section 24 of the Indian Contract Act *Munshi Lal's* case lays down that where a contract carries with it an element of punishment, it is in the nature of a penalty. The material conditions which fell for interpretation in *Munshi Lal's* case was on these terms:

That if, for any reason, the whole or part of the property sold goes out of the possession of the vendee and their heirs and representatives, then the vendor, their heirs and representatives, shall have also power that by cancellation of the said deed executed and signed by the vendee in favor of the purchaser no. 4, they get possession of the said property returned and become in possession of the property entered in the said sale deed to a mortgagee like the vendor. "

Age Group	Total (%)	Male (%)	Female (%)
18-24	100	100	100
25-34	100	100	100
35-44	100	100	100
45-54	100	100	100
55-64	100	100	100
65+	100	100	100

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In the case of the learned judge of the Outh Chief Court, the use of the word "that" in the aforesaid, second paragraph, indicated that the condition was by way of an additional remedy and therefore was in the nature of a *pactum* clause. This condition was interpreted as a condition of defence and, after referring to the provisions of section 21 of the Transfer of Property Act, it was proved that a condition when given by way of defence on the happening of an unforeseen event can be void, they went on to say that, even if the law allows such a condition being imposed, a Court was not bound as law to enforce such a condition as very probable case. Reference was placed on the case of *Alexander Popham v. Brougholt* (1) and particularly on the observations of the Lord Chancellor in that case on page 326. The learned judges of the Outh Chief Court were of the opinion, relying on the words of the Lord Chancellor, that in the circumstances of that case it was just and equitable to relieve the defendant of the specific performance of the condition. They were of the view that the additional words of definition, given to the plaintiff in this case, were in the nature of a liability imposed on the defendant by a *pactum* clause for their constituting a breach of the agreement. In the present case we are of the opinion first the right given to the plaintiff to amend the contract is a whole, we are of the view that a *pactum* clause was in the nature of a safeguard of the plaintiff's own interests in the property which she had chosen to give to Sir Charles Nathan for discharging certain obligations which he was required to discharge as a condition for the transfer. We are aware that a *pactum* may be a *condition* *potestativa* or a *condition* *potestativa*, and that it may be *potestativa* or *potestativa*, but in all circumstances a *pactum*

infringe a penalty, but to constitute the existence of a penalty what is necessary is that it should appear that there was an element of punishment; however well-intended and temperate such punishment may be, done. It is this case we have taken the view that there was no element of punishment.

Reference was next placed by the learned trial judge on the decision of the Privy Council in *Goodman v. Drake* (1). In that case there was an agreement for sale of certain land, and on execution of the agreement a portion of the purchase money was paid and for the balance it was provided that it should be paid with interest by annual instalments on a particular date in each year and that on any default the whole property and interest secured by the agreement should at once become due and be payable or the vendor should be foreclosed and determined at the option of the vendor, and it was also provided that time was to be considered in the essence of the agreement. The first instalment was not paid; the vendor therefore gave notice cancelling the agreement. The vendor after receipt of the notice tendered the amount but the vendor declined to receive it. The vendor sued for specific performance and, in the alternative, claimed a relief against the forfeiture clause in the agreement. On these facts it was held by their Lordships of the Judicial Committee that there was no prohibition for decreeing specific performance and that the stipulation for forfeiture was one for a penalty which the vendor should be relieved against. Their Lordships further pointed out that under the agreement of that particular case the court below was right in holding that the vendor could not insist on forfeiture in accordance with the strict terms of the agreement. It is important to notice that the vendor's

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 6. **References**

claim for specific performance, was rejected, with the result that the ground was left by the doctrine of the court concerned back, practically, to the position in which the case, before the question for sale, was situated.<sup>1</sup> It was then held by the Justices of the Queen's Bench, in the case of *Johnson v. Bristol Colonial Orchard Land Limited* (1) that specific performance of the promise, thereby made of installment, might, on evidence to be given, be treated as really a specific performance for periods, and should be refused again. There can be no doubt, therefore, that where a party under a contract obtains an undue advantage by the happening of a hazard, that court has to ignore the party trying to secure such an undue advantage. It is the case before us, the plaintiff does not, in our judgment, obtain any undue advantage by the enforcement of the clause which gives her the right to determine the fruit's arrangement as an owner.

Rehman was now placed on a petition of the Nigga Judicial Commissioner's Court in New Delhi. Chandra Bhaga (2) In that case the first defendant to the re executed a deed of maintenance in favour of the plaintiff agreeing to pay her a certain sum of money every year for her maintenance, and if default was made to deliver to the plaintiff possession of a certain field for maintenance and appropriation of profits in lieu of maintenance. Defendant 4 is the son and a purchaser of the property without notice of the plaintiff's right, and he after his purchase, made certain improvements in the property. Default was made and the plaintiff sued for possession on the strength of the agreement. It was held, first, that the document did not, strictly, say right to the plaintiff in the property, and that the agreement was only an executory agreement which could be enforced if the plaintiff wished to exercise the option.

given to her. The fourth defendant was willing to pay the monies due, and hence the agreement was not specifically sustained. It was further held that the process was for the recovery of the possession of the land under the circumstances was in the nature of a penalty rather the carrying of section 74 of the Contract Act and the Court, as such, was not bound to enforce it. The learned Judge of the Nigbo Judicial Commission Court pointed out that the object with which the particular legislation was put into the agreement was to induce the mortgagor to pay up the amount as soon as the demand for possession was made, and naturally, therefore, they were driven to the conclusion that the condition was in the nature of a penalty. It was argued before the learned trial judge that even if the clause in question was in the nature of a penalty even then it could not be relieved against inasmuch as it was contained in a lawful instrument. The learned Judge rightly overruled this contention, because he had the authority of this Court in *McDonald v. Anderson & Co.* (1) to the effect that a compromise, even if embodied in a decree, would not necessarily be enforced by a Court if it contained a penal clause.

On behalf of the appellants reliance was placed on the decision of *Shro Prasad v. Sankalsh (2)* where it was held that the term penalty cannot be properly applied where all that is agreed between the parties is that they shall object to the sentence passing immediately prior to the new agreement, even though that may involve liability on the part of one of them for a sum greater than if he had carried out the agreement. In this case one of the parties is object and it is

If you will agree to pay me so much, I will accept it; if you do not so pay, I must stand upon my legal rights.

Q. AND THAT IS ALL THAT IS IN THE CASE?

A. YES.

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Reliance was based on the position on the ground then. At the time, the plaintiff approached the Special Judge for the purpose of getting the evidence taken. We do not consider that the fact the plaintiff had approached the Special Judge with respect to the arrears of her maintenance was the choice of an alternative remedy available to her, or that the choice of that remedy could have obtained for her satisfaction for the alleged breach of contract. The remedy to recover the overdue arrears was not an alternative remedy to getting back the property on failure of these constructive trustees.

On behalf of the respondents it was further argued that the present suit was barred by the provisions of Order 21, rule 2 C P C because according to the respondent the relief for possession should have been sought before the Special Judge by the plaintiff when she approached that court with regard to the arrears of maintenance, because the cause of action in respect of both the claims was the same. No such bar was raised in the written statement and indeed there could be no such bar to the suit inasmuch as the present suit had been filed before the plaintiff approached the Special Judge under the provisions of the Karnataka Debtors' Act.

On behalf of the appellants the same argument was that the suit was barred by the provisions of section 41 of the Transfer of Property Act. The trial judge had considered this argument and had come to the conclusion that there was no such bar. It was found that none of the transferees made any response in regard to the title of his transferee. The learned judge further found that the action should not in some cases (see *Shankar Shankar*) be set on as available merely but was in effect the true owner when he made

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the transfers, although his ownership was liable to be defeated on the happening of a certain contingency. The learned judge further found that the plaintiff did not act either of commission or omission which could have enabled the transferees to sue in tort. We have examined the evidence and we are satisfied that the learned judge was right in the conclusions to which he arrived in regard to this action. Therefore in our judgment, the transferees could not, under the circumstances of this case, invoke the aid of section 11 of the Transfer of Property Act for their protection.

On behalf of the transferees, it was truly submitted that this suit was really a suit for specific performance of a contract and that specific performance should not be decreed inasmuch as the desired object may be achieved by giving possession to the plaintiff as a part of the transferees' properties, those properties having vested in the State by virtue of the *Provincial Alienation Act*. We, however, are of the opinion that the present suit was not a suit really for the specific performance of a contract, but it was a suit for possession, pure and simple. In what A. of his pleads the plaintiff's prayer was set out as follows:

(A) The plaintiff may be put in possession over the property specified below on the discontinuance of the defendants'.

The suit embraced not only unalienated properties but also leased properties. On the view that we have taken the plaintiff was entitled to possession of the properties in suit. Whether she can get actual possession or not by virtue of some statutory provision is not in our judgment a ground for not giving her a decree for possession. The question whether she can or cannot be put in actual possession in respect of one

this proposition will undoubtedly be determined when that question comes before the Court, on questions previously raised.

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In the result, we allow this appeal set aside the decree of the trial court and decree the plaintiffs win the decree, however, will not be as against respondents as 5 months, Respondents. Thus in respect of whom there has been no abatement of the appeal by virtue of a previous order of this Court. The appellants will be entitled to get the costs of this litigation from the respondents.

*Appeal allowed*

### CIVIL MISCELLANEOUS

*Before Mr. Justice Sopha and Mr. Justice Chatterjee*  
SHOOLBHAM PANDY and others (Appellants) 1932  
vs. *Respondents* (Respondents) 119

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V. G. GAN and others (Respondents)

Representation of People Act, 1916, ss. 10 and 11—Candidate withdrawing his candidature without satisfying election—Is a necessary party to an election petition—Meaning of 'candidate' in s. 11 explained—Constitution of India, Art. 226—Order of law by the election tribunal—Petitioners' plea—High Court, if not correct.

A candidate who withdraws his candidature on the day of scrutiny and does not secure the election, even so he is not a necessary party to the election, and is not a necessary party to an election petition.

Under section 11 of the Representation of People Act a candidate must be a person at the polling station who continues as a candidate right up to the time that the election is held.

An order of law on the decision of a petitioner, even which an election tribunal is competent to determine, is the ground for reaching the order of the collector in the exercise of his jurisdiction by High Court.

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Part 3, Co. Ltd.'s Commercial Properties, District  
Mafra, (T) seized upon and B's Incorporated Company  
claim against Tribunal (B) refused to

Civil Miscellaneous (Muz.) No. 96 of 1948

The facts appear in the judgment.

Gejaly Mirza vs. and Anand Mirza Vs. for the appli-  
cant.

The Standing Counsel (Muzafar Hussain) for the  
opposite parties.

The judgment of the Court was delivered by—

SEN, J. —This is an application under Article 226  
of the Constitution of India praying that the Court may  
be pleased to issue a writ of certiorari quashing the order  
passed on the 15th December, 1952, by opposite parties  
nos. 1 to 5 and a writ of prohibition directing opposite  
parties nos. 1 to 5 not to proceed with the election con-  
tained in 116 of 1952 *Shri Ram Jiwani v. Moh. Anwar*.

The facts which have given rise to this petition may  
be stated briefly.

The two general elections under the Constitution of  
India were held in the district of Allahabad on June 25,  
1952. The Saathi Mahapangan constituency from  
which the applicants were seeking election in this dis-  
trict, was a double-member constituency with a seat  
reserved for a Scheduled Caste candidate. For the  
election there were more or more candidates. Six oppo-  
site parties nos. 4 to 15. Sri Moh. Anwar, Pandey and  
Sri Sahib Ram Bhatnagar were among the duly nominated  
candidates for the Uttar Pradesh Legislative Assembly.  
Each of them were standing on the Congress ticket. Sri  
Shri Ram Jiwani and Yashwanth Sahib Ram were set  
up as candidates on behalf of Kisan Workers Front Party.

Election at the stated constituency was held on the  
15th January, 1953, and after the counting of votes the

petitioners nos. 1 and 2 were declared elected on the 24th February, 1952. Thereafter, being dissatisfied, the opposite party no. 1 proceeded to elect persons challenging the validity of the elections before the Election Commissioner of India New Delhi. This election petition was sent for disposal to the Allahabad Election Tribunal consisting of opposite parties nos. 1 to 3 with opposite party no. 1 as Chairman. One George Prasad was the first law agent who was appointed and accepted in the Returning Office. He however withdrew his candidature subsequently and did not contest the election. The post on filed by the opposite party no. 4 was objected to by the petitioner on the ground that she was ineligible as the petitioners had failed to implead that George Prasad is a Hindu. The petition was liable to be dismissed. This question was decided by the Tribunal by its judgment dated the 15th November, 1952. The Election Tribunal having held that it was unnecessary for the opposite party no. 1 to implead George Prasad the petitioners have not come up to this Court under Article 226 of the Constitution.

1952  
Election  
Petition  
No. 1 of 1952  
George  
Prasad

Before considering the various points which have been raised in the case reference may be made to the fact that it is conceded by both the parties that the Election Tribunal which is functioning in Allahabad is subject to the jurisdiction of this Court under Article 226 of the Constitution. Article 226 of the Constitution reads: "And also, the power of appointing election tribunals for the decision of disputes and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States to the Election Commission. Article 226 lays down that in election to the Union or State Legislatures can be questioned only by an election petition presented in such manner and in such manner as may be provided for by or under

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are law made by the appropriate legislature. The Act has laid down the constitution of the Election Tribunal, in which petitions may be referred for disposal by the Election Commission to try the petition. As provided in the Constitution taken away the power of superintendence which the Court exercises under Article 227 or the power of issuing writs to an election tribunal once it has been constituted to have a petition. It is unnecessary to dispute on this point further as it is the common one of both the provisions that the Court may proceed even to constitute a writ petition against an Election Tribunal.

The case of the petitioners is that even though Gangi Prasad had given his candidature on the date of election, he remained a duly nominated candidate and that it was not competent to the Election Tribunal to hear the election petition without Gangi Prasad having been impleaded. The short question, therefore, is this petition is whether the failure of opposite party no. 1 to implead Gangi Prasad is fatal to the maintainability of the election petition presented by opposite party no. 2.

On the date of the nomination in which a candidate's name was announced, Gangi Prasad was not Gangi Prasad. He survived as a voter under section 36 of the Representation of People Act, 1950 (hereinafter called the Act) but withdrew his candidature under section 27 of the Act on the date fixed under clause (c) of section 36. The question first has to be considered is whether under clause (c) a candidate can be said to have remained a duly nominated candidate on the date of polling.

It needs considering how section 36 of the Act is construed. It is necessary to reproduce it in full as follows:

PARTIAL TO THE PETITION.—A petitioner shall not be responsible to his petition till the candidate who

who duly nominated in the election other than himself if he was so nominated.

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It is contended that section 82 must be read in the context of section 79. Both sections 79 and 82 occur in Part VI. The heading of this part is: *Regulations Regarding Elections and Chapans*. I has the heading: *Interpretation*. It is stated that the words 'in an election' in section 82 really are synonymous with 'for the election' and that there are wide enough to include a candidate who was a duly nominated candidate on the day of the nomination but who ceased to be a candidate on the day when the polling actually took place.

Section 79 is in the context of a definition clause and defines a candidate as meaning a person who has been or claims to have been duly nominated as a candidate at any election and any such person shall be deemed to have been a candidate from the time when, with the election in prospect, he begins to hold himself out as a prospective candidate. Clearly a wide definition had to be given to the word 'candidate' as the object appears to have been to prevent corrupt or improper practices. The words 'in any election' in section 79 would in cases in which an actual election takes place have reference to the exact time when the polling takes place. It is said to note that the definition given in section 79 is subject to the context otherwise interpreting. On this point of the case we may note particular reference to section 82 in Chapter III of Part V which brings out the difference contemplated by the legislature between the position of a candidate who withdraws his candidature on the day of scrutiny and a candidate who dies before the actual polling takes place. If a duly nominated candidate dies after the date fixed for the scrutiny of nominations and a report of his death is received by the Returning Officer before the commencement of the poll the Returning Officer is under an obligation





petition or by his proposal as recorder, born on the last-mentioned in that section, date or to the Returning Officer at the place specified in that behalf in the name issued under section 81. A nomination paper consisting of the prescribed form and subscribed by the candidate himself or by writing or by nomination and by two persons referred to in sub-section (1) is presented and recorded. Section 83(2) enables any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in section 15 of the Act to submit his or her proposal or nomination in every constituency paper in which the vacancies are to be filled, but no more subject to the previous mentioned terms. Clause (3) of section 83 requires that the nomination paper delivered under sub-section (1) and to be accompanied by a declaration in writing subscribed by the candidate that the candidate has appeared in his election agent for the election either himself or another person who is not disqualified under the Act for the appointment and who shall be named in the declaration and to such other declarations if any, as may be prescribed. It is to be noted that under this clause no candidate will be deemed to be duly nominated unless such declaration or all such declarations are delivered along with the nomination paper. Sub-clause (3) makes it incumbent on the Returning Officer to check himself that the names and electoral roll numbers of the candidate and his proposer and recorder as entered in the nomination paper are subject to the correction of any clerical error the same as those entered in the electoral roll. Clause (5) of this section enables the Returning Officer to require the person presenting the nomination paper to produce if his name is not registered in the electoral roll of the constituency for which he is the Returning Officer either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in

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with will. Section 14 lays down that a candidate, in order to be deemed to be duly nominated, must deposit an amount to be deposited, a certain sum in the Reserve Bank of India or in a Co-operative Treasury. It will be seen that the fulfilment of these conditions is necessary for being a duly nominated candidate. Section 14 deals with notice to nominees and the time and place for their accounts. Section 15 deals with the important question of accounts and nominations, reports and copies to the Returning Officer. It lays to hold a tax return, return on any of the grounds mentioned in section 15 (2) drawn (a) to (d). Section 16 enables a candidate to withdraw his candidature either time off by a certain date fixed under clause (a) of section 16 by a notice in writing to person or by his proper agent or by a person agent authorised to withdraw the candidature. It is vital to note that under sub-section (2) no person who withdraws his candidature is allowed to stand in, notice of his withdrawal. It is equally vital to note that under sub-section (3) the Returning Officer on receiving a notice of such a withdrawal has to send a notice of the withdrawal to be affixed in some conspicuous place in his office. Under section 17 the Returning Officer, after the opening and scrutiny of the votes, takes place has to prepare and publish a list of valid names of voters in such manner as may be prescribed. It is clear from the scheme outlined above that it is only first among the list of duly nominated candidates who have not withdrawn their candidatures and those back who deposit that the list of valid nominees can be drawn up. It will also be seen that for the purpose of the election, the candidate who allows himself to be nominated with the formalities, who receives the scrutiny of his nomination paper has withdrawn his nomination before or on the date fixed for the withdrawal of the deposit seems to be one kind of candidate in the election.





in the United Kingdom: details of members of the House of Commons and the whole proceedings at Westminster were to change.

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**  
 6. **References**

We use the quote in the definition of the word-classes given at the *Yoruba Standard English Dictionary*, Second Edition, which is as follows:

The choice by popular vote of members of a representative assembly, e.g. the House of Commons, is the exercise of deliberate choice.

[illegible]

Now, it has been argued that the word *cardinals* has been defined in section 70 (3) that the definition is wide enough to include a duly appointed cardinal who withdraws his cardinalate and that that is the interpretation we should give to that word under section 52. Now it makes us that it is not until the Registry Office publishes the list of valid names that under section 58 that everybody knows which among the duly appointed cardinals are the cardinals in the absence. Section 70 gives a definition of the

in the glosses. Section 79 gives a definition of the words candidate and returned candidate. But there is no definition of the words debt, nominated in section 78. That has to be gathered from the other sections to which reference has been made by us. On a survey of the relevant provisions the reference appears to us to be irretrievable that the words at the election have been used in section 82 in its negative sense.

We cannot understand how and why a person who completely trusts himself or her—as the election is

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concerned, by withdrawal, himself from the contest should be regarded as validly nominated in the election in the same manner as other duly nominated candidates who contest the election. His petition cannot be higher than that of art. 102 is in character. Indeed, it is possible to imagine that in the party or groups he belongs to, some persons may have become of themselves with that group or party a more living interest in the election than the withdrawal candidate. Now if it is open to a voter to present an election petition but the law does not make it obligatory on him to so plead all the voters up an election petition. We are totally unable to understand why an exception should be made in the case of a withdrawal candidate.

Learned counsel for the opposite parties has drawn our attention to several sections in which the distinction between as the election is by the electors. We can keep before us mind and the words have been read with care. The law, however, is not that the Act does not appear to have been carefully drawn up. We however think that the proper course for us is to give to the words as the election is by the electors. It was sought to be argued that it would be who then of himself to be duly nominated and then there is whether his candidature should be placed on a further footing than an average voter. It is not a person who he filed by him even if he is not a voter in the constituency. We are unable to discover any provision in the Act which would enable a withdrawal candidate who is not a voter to present such an election petition. Both next is placed for the above proposition upon section 81 that here it is stated that the words "any elector" are qualified by "or such electors". They can not obviously include a person who withdraws himself from the contest before the election is over. Some reason may be an essential prerequisite to election and

may be persons in election but it does not determine the whole process of election. This interpretation of section 82 is that the candidate must be a person if the polling takes place who possesses as a candidate right up to the time that the election is held.

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Restrictions were made to the decisions of certain election tribunals. We allowed them to be used before us but we do not think it necessary to consider them in length. We are unable to agree with the view expressed by one of those election tribunals that a duly nominated candidate, who has withdrawn himself from the contest has no interest in it if election is held which he did not have been due to the fact that he wanted to seek withdrawal to help the candidature of some other candidate of his or his party of persuasion. The fact is that the withdrawn candidate is no candidate at all. He has simply gone out of the picture. We therefore think that the Tribunal has taken a correct view of the meaning of section 82. In our opinion *Chang Pooan* was not a necessary party.

The question as to what the proper meaning of the words 'duly nominated candidate' in the election in section 82 is a question of law on which the election Tribunal's view should be regarded as final. It is well known that erroneous and prolixity are not grounds to set aside judgments of law. We may refer on this point of the one up the recent case of *Puri & Co. Ltd. v. Commercial Employers' Association, Madras* (1) where the Supreme Court has held that the High Court cannot set aside a decision of law made by a Labour Commissioner under the *Madras Shops and Establishments Act 1947* on the mere ground that such decision is erroneous in law. The appellant before the Supreme Court was a bank of India company carrying on business in Madras.

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The respondent was the Association of General Employers including those under the appellant. A petition was presented by the respondent before the Labour Commissioner Madras under sections 11 of the Shops and Establishments Act, for a determination of various questions relating to the rights and privileges of the employees of the appellant. Notice was served by the Commissioner calling upon the appellant to appear and answer the contention raised on behalf of the employees. After hearing the parties and considering the evidence which had been adduced before him, the Labour Commissioner made his decision on six steps, two of which are relevant for the purposes of this case. Pivotal attention may be drawn to them. They were as follows:

Issue no. 3—Whether there has been an increase in working hours from 8 to 6½ on work days from 15th October 1948 and the increase is permissible?

Issue no. 6—Whether overtime wages at more than ordinary rates should not be paid for work done by the employees after the normal working hours?

The view of the Labour Commissioner was that the business hours of the Company were as and paid prior to 1st April, 1948 when the Act came into force and they continued to be so even after the Act. As regards issue no. 6, the finding of the Labour Commissioner was that the employees in the company would be entitled to overtime wages only when the statutory hours were exceeded. The finding of the Labour Commissioner was challenged in a writ petition before the High Court. The learned Judges of the High Court affirmed the petition in part and quashed the order of the Labour Commissioner in so far as it decided that



the employees would be entitled to overtime wages only when the statutory hours were exceeded. This view of the Madras High Court did not find favour with the Supreme Court. On the above facts their Lordships of the Supreme Court came to the conclusion that there was no error apparent on the face of the proceedings or any irregularity in the procedure by the Labour Commissioner going contrary to principles of natural justice. For these reasons they held that there was no ground which could justify a superior court in issuing a writ of certiorari for the removal of an order in proceedings of an inferior tribunal vested with powers to exercise judicial or quasi-judicial functions. They find it hard to disentangle this case from the previous one.

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Reference may also be made to the earlier case of *Chirsham Aliabekdar v. Gaudaha: General of Frontier Property*, New Delhi (I). In this case it was pointed out by Mahajan, J., who delivered the judgment of the Supreme Court that the legislature had not limited the jurisdiction of the Gaudaha General by providing that such exercise would depend on the existence of any particular state of facts as he had been constituted an appellate court under section 34 of the Administration of Frontier Property Act in words of the widest import. The law is laid down by the Supreme Court in the case is that, ordinarily a court of appeal has an inherent jurisdiction to determine any point raised before it in the nature of preliminary issues by the parties. Such a jurisdiction is inherent in an appellate jurisdiction as a court of appeal. Whether an appeal is competent, whether a party has locus standi to prefer it, whether the appeal in substance is from one or another order, and whether it has been preferred in proper form and within the time prescribed are all matters for the decision of the appellate court as constituted. The







amounts that remained the plaintiff's and for recovery of Rs.22,662 1/2 and dismissed the rest of the claim. The defendant filed this appeal and the plaintiff filed a cross-objection against the portion of the decree that was dismissed by the lower court.

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We have heard learned counsel for the parties at some length. On behalf of the defendant it is urged that the defendant was not liable for any damages as he was perfectly within his rights in giving notice of the 5th of December, 1937 and repudiating the contract, and secondly that the damages claimed have been well measured.

Before we deal with these points in detail, it may be convenient to give the facts so far as they have been proved by the evidence on the record.

On the 10th of January 1935 the plaintiff Sir Ramesh Das had executed a simple mortgage in favour of Bhagwati Das Bank, Ltd. for a sum of Rs 1,50,000. Copy of this mortgage deed is Ex. A.1. The only relevant portions of this mortgage deed to which reference has been made by the learned counsel for the appellants is a covenant which provides that the mortgagors shall not let or lease out the mortgaged property for any period exceeding one year without the permission of the Bank in writing. On the 19th of October 1935 as has already been mentioned, the plaintiff executed a lease in favour of the defendant for a period of ten years. The relevant portions of the deed is as follows.

Now for a period of ten years, commencing from the 15th of October, 1934, and lasting up to the 24th of October, 1944, I the first party have in lease of a fixed thick money of Rs 25,000 a year lessed out to both Dey, Chandel second party the

that certain fixtures such as machinery, engines, tools, and other accessories appertaining thereto.

The plaintiff in his cross-examination admitted that he had not obtained the various payments from the Bank for allowing the defendant to use the money.

The defendant got into possession of the mill and started working it. They have not made some default in payment of the debt money, and on the 25th July, 1907 the plaintiff filed a writ that on 18 of 1907 for recovery of Rs 21125, the amount of debt money claimed to be due. On the 15th of October, 1907 the defendant filed a written statement para 10 of which was as follows:

The plaintiff has denied the crossing defendant. It was not disclosed to the crossing defendant that the use of the Mill was assigned to Bhagwan Das Bank. Under the terms of the mortgage deed, the plaintiff has got no right to let out the Mill on hire, for a term exceeding one year without the consent of the mortgagee and hence the said hire is voided null and void and is not binding on the crossing defendant.

So far as the record goes this is the first document in which any reference is made on behalf of the defendant objecting to the non disclosure of the facts in the mortgage deed that the mortgagee will not exercise a lease for more than one year without the mortgagee's consent. Two papers were filed in the lower court on behalf of the defendant, Ex A 11, and Ex A 12. Ex A 11 was said to bear some date in August, 1907 but the paper itself bears no date. Ex A 12 is another paper without date and sent either towards the end of August or the beginning of September, 1907. These two documents purport to be copies of notices sent by the defendant to the plaintiff. These were filed in

copies of notes sent to the plaintiff of which the defendant being in plaintiff's possession, the defendant was entitled to require production. Evidence thereof. The plaintiff denied the authenticity, and endorsed on these papers "not admitted". These two documents were submitted into evidence on the argument made by the defendant. Defendant who, however, said that these were drafts and did not say they were copies. His argument on authentication does as follows:

I was a reply to the plaintiff's notice and its draft has been filed by me. It is dated and was received the plaintiff on 21st August 1987. It is the correct copy of the original reply marked Ex. A 11. I was a reply to the plaintiff's notice, dated 20th August, 1987 and its draft is also filed. It is after the draft is the correct marked Ex. A 12.

The original notice of my being in plaintiff's possession was not being having endorsed them the defendant had no doubt a right to give secondary evidence. But the original or evidence could only be such as you submit. As in law. Section 10 of the Indian Evidence Act (No. 1 of 1908) defines secondary evidence as follows:

Secondary evidence means and includes

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them.

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(5) and accounts of the contents of a document given by some person who has himself seen it.

A copy of a document may, therefore, be admissible as secondary evidence, but a draft cannot be treated as secondary evidence. These two papers, Exhibits A 11 and A 12 do not come under any of the five categories of secondary evidence mentioned in section 63. They are not copies made from or compared with the original. According to the defendant himself, they are merely drafts.

Learned counsel has however relied on a decision of their Lordships of the Judicial Committee in *Capital & Counties Bank v. The City of London* (1897) 12 Q.B. 100. The question there was of the admissibility of a certified copy of a receipt alleged to have been executed by Parthasarthy Das on the 29th March, 1911. The High Court had rejected the copy on the ground that the defendant had not had any foundation for the admission of a certified copy, and there was no evidence to prove the execution of the receipt by Parthasarthy Das. Reliance is placed on the observations of Sir George Rivers, where he said:

Where the objection to the copy is not that the document is in itself inadmissible but that the mode of proof put forward is irregular or invalid, some it is assumed that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record. A party cannot lie by until the case comes before a court of appeal and then complain for the first time of the mode of proof. A strictly formal proof might or might not have been forthcoming had it been insisted on at the trial. In the present instance it does not appear that the objection was taken at

Q.B. 100, 101, 102.



The proper time or that it would have been of any avail had it been taken.

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After these observations by Lordship went on to discuss the merits and held that Parthasarathy Das was an author of the plaintiff and an admission made by him was admissible as evidence against the plaintiff. The document being registered Parthasarathy Das never was not sub- given in the document; but he had also been identified by two persons before the Sub Registrar and the question as to whether the document was registered by Parthasarathy Das or by an impostor was held to be a question of fact, the presumption being in favour of genuineness. In the case before us the question is not whether the defendant had had knowledge for leading secondary evidence. As a matter of fact, his right to lead secondary evidence was not challenged before us. The question is whether the facts produced by him can be considered to be secondary evidence at all. The question as to this case is not of mere formal proof but of treating as secondary evidence papers which cannot be treated as secondary evidence under section 49 of the Indian Evidence Act. It was when the defendant came into the witness box and stated that the papers filed by him were mere drafts that it could be known that they were not copies made from the original and compared with it. These two documents must therefore, be ruled out as inadmissible.

From the documentary evidence on the record there too, it appears that in the *deposition* statement filed on the 18th of October 1927 by the first case the plea was taken that the plaintiff had not disclosed the terms of the mortgage deed, that the plaintiff had no right to be on the mortgage for a period exceeding one year with out of the terms of the mortgage. The next date after the filing of the written statement is the 26th December, 1927, on which date the defendant gave notice to the

plaintiff (the "Y") submitting that when he had stopped working the mills each office from 25th November 1933. On the 10th December 1937 the trial judge decided the "Y" mills are no 18 of 1917, by virtue of their entry in the 1918/1937. The defendant filed an appeal on the 1st December in this court and it was announced and reported here and the appeal was set off. On the 1st December 1937 the plaintiff was a party to the notice of the 8th December. It may be noted that on the notice of the 8th December no account was given when the defendant had stopped working the mills from the 25th of November 1937. All that he said was that he had no need to run the factory. In the reply the plaintiff pointed out that in case the defendant consented to a breach of the covenant he will be held liable for all losses then the plaintiff would suffer. On the 1st February 1938 the defendant entered his notice in reply to the plaintiff's notice of the 10th December. In (1) The following paragraphs of the notice of the 1st February 1938 are of importance to this effect the relevant statement for the first time making no mention of the non-disclosure of the terms in the mortgage deed reserving the mortgagee's right to exercise the lease for a period of more than one year.

(1) That the assignment of a leasehold was procured from him by use of fraud and mortgage, agreement and terms inconsistent and evasion of and an undue influence and it is void and unenforceable.

(2) That the said leasehold is all rights available to him (plaintiff) and he has exercised the right stopping the working on the Mill and taking possession of the rent.

(3) That in no case you are entitled to give a lease for more than a year and that your having

expired, the lease has become *quæ facta* property, that  
 true and you can no longer have it. Don't Over

Learned counsel for the appellant has urged that after it is the  
 the mortgage, dated 10th January 1933, the mortgagee the  
 had no right to evict the lease, and in view of the that  
 terms in the mortgage deed that he shall not let or lease that  
 out the mortgaged property for any period exceeding that  
 one year without the permission of the mortgagee in that  
 writing, the mortgagee could in no case grant the lease that  
 for a period longer than one year. It is therefore that  
 urged that the lease itself was void and the defendant that  
 by repudiating it and refusing to continue in possession that  
 thereof had not committed any breach of the contract.

The argument that the mortgagee after executing that  
 the mortgage has no right to evict a lease without the that  
 consent of the mortgagee is supported as he supposed that  
 by the observations in a decision of the Supreme Court that  
 in *Raja Kuralathaya Narayan Singh v. Chokan Ram* (1). that  
 Reference is made to a passage in the judgment of that  
 Bhattacharya J. which the learned judge used.

The question whether the mortgagee in power that  
 can let or lease the mortgaged property has that  
 got to be determined with reference to the authority that  
 of the mortgagee as the landlord or agent for the that  
 mortgagee to deal with the property as the usual that  
 course of management.

Learned counsel has urged that their Lordships have that  
 held that the position of a mortgagee in possession, even that  
 in the case of a simple mortgage is merely that of a landlord that  
 as agent for the mortgagee and a landlord or agent cannot that  
 without the sanction of his principal deal with the property that  
 and as his case there being a restriction on the right that  
 of the mortgagee contained in the mortgage deed that he that  
 would not execute a lease for more than one year, such that  
 was the mortgagee's consent the mortgagee could not that  
 have executed a valid lease of the mortgaged property.

Q. Now, did you also find out that the entire family stand the decision of the Supreme Court? That I red shape was dealing with a case where the question now has the issue created by a mortgage before the Trustee of Property Investment, Inc. of 1978 could bind the mortgage, and on the contrary that Lord shape said that if the mortgage had read as a matter that it could be read that he was acting not only on his own behalf but also on behalf of the mortgagee that the mortgagee would be bound. The observation relied on by learned counsel elsewhere do not suggest

Reference has been placed on a recent decision of the Court of Appeal in England in *First Trade Explorers Insurance Association v. Crown of Nepal and First Insurance Ltd* (1994), in which counsel has urged that no rate could be entered in the mortgage without the written consent of the mortgagee. In this connection it must be remembered that the position of a mortgagee in possession in India is vastly different from the position of a mortgagee in possession in England as was pointed out by Ghosh in his book on Mortgages, Vol. I, P. 251, that:

they enjoy the new living class, and just with the  
satisfaction of the property the phasing it on has  
done over the top of conventional life, and just  
from before class is therefore widely under  
that of an English man, and in possession of a more  
good sense."

First is the case of a mortgage on England before the Law of Property Act 1925, the mortgagee had a right in common law to grant a lease through that lease would no doubt not be binding on the mortgagee. Such a lease though not binding on the mortgagee, was a valid lease between the mortgagor and the lessee. In the

decisions quoted by learned counsel this point is the correct one in law and the effect of the Commonwealth Act of 1881 on this constitutional right has also been definitely settled. The learned Judge (PARKER, J.) has said on page 181 that

1881  
Commonwealth  
Act of 1881  
Section 1  
Section 2

Under the law as it was before the Act of 1881 every man possesses the power to do what he pleases there is no legal mortgage the mortgagee although in possession, had no power to grant a lease which would be binding on the mortgagee a lease would be good and the lessee would be in Equity against the mortgagee or against any person having a title paramount to the mortgagee such title to the benefit conferred thereby but as against the mortgagee the lessee would have no estate or interest under the lease except that he had a right to redeem in the event of the mortgage being kept in existence from possession of the property.

As regards the effect of the Commonwealth Act of 1881, the learned Judge said that

the effect of that statutory power would enable the mortgagee for the first time to do something which hitherto it had not been possible for him to do, namely to grant a lease during the continuance of the charge which would be binding on the mortgagee. The fact that that power was given to the mortgagee does not and did not, in any judgment, deprive the mortgagee of the right which he had apart from the Act (namely) namely, to grant a lease as a third party, without the consent of the mortgagee which would not be binding on the mortgagee but would be binding as between the lessee and the lessor."



land the mortgagee is another owner. The Transfer of Property (Amendment) Act of 1929 tried to clarify the position as written in (a) of the Act by laying down in what cases a lease granted by a mortgagee lawfully in possession of the mortgaged property, would bind the mortgagee. Section 63 A does not mean, as has been urged by learned counsel, that a lease granted in contravention of the terms of section 63 A is a void lease as between the lessor and the lessee. All that is provided is that if a mortgagee has executed a lease in accordance with the provisions of section 63 A, the lease will bind the mortgagee also subject of course to any contrary intension expressed in the mortgage deed itself. The point that was therefore, urged on the lower court that the lease was not a valid lease at all and in any case, it could not be a lease for a period of more than one year and, after the expiry of one year it ipso facto came to an end and ceased to be operative has no force. It was on this ground that lease was challenged on the lower court and the lower court rightly held against the appellants.

The Appellate, cited the learned counsel for the respondent to satisfy us on a slightly different point: that is whether the lease was not entitled to stand the lease as coming to later of the mortgage which jeopardized his position in the way that the mortgagee might have brought a suit on his mortgage and sold up the property and then disappointed the lease. Under section 185 (i) of the Transfer of Property Act (no 19 of 1929) the lease is deemed to comply with the law so that if the lender pays the rent reserved by the lease and performs the contract binding on the lessee, he is entitled to hold the property during the term limited by the lease without interruption. In other words in this case the lender guaranteed to the lessee quiet enjoyment for a period of ten years. It is for in the great the question

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1221 of quiet enjoyment for ten years, the learned judge suffered  
 1222 from this defect that in view the mortgagee had filed a  
 1223 suit on the mortgage and obtained a decree for sale and  
 1224 sold up the property, the auction purchaser would have  
 1225 been entitled to dispossess the lessee.

Two points arose in this connection, whether the fact that the property was subject to a mortgage which reserved the right of the mortgagee to grant a lease for more than one year, was declared in the lease before the lease was executed as he might have in that case refused to take the risk of being turned out by the mortgagee before the expiry of ten years and the effect of such a clause on the lease itself. Secondly, whether as this was the lessee had, after he came to know of these terms ever repudiated the lease on that ground in accordance with the provisions of section 38 of the Indian Contract Act. Learned counsel for the plaintiff has, however, urged that these points were not taken in the lower court in there was no real danger of the lessee's possession being disturbed and the mortgagee has not even after all these years, brought a suit for his money and has not attempted to dispossess any of the lessees who got possession of the mills after the defendant had given up possession thereof. Learned counsel has further urged that if the defendant had ever made any grievance of this fact and wanted further guarantee, the mortgagee could have either obtained the mortgagee's consent to the lease, or he might have redeemed the mortgage and without selling upon the mortgage, or do so, he could not straightforwardly treat the lease as repudiatory and not of binding effect.

As regards the first question, we have already said that the mortgagee had a legal right to grant a lease of the property. The lease therefore cannot be deemed to be void or illegal merely because it was not binding



on the mortgage and there was some possibility that the whole period for which the loan was granted might have to be cancelled by reason of the action of the mortgage. It cannot be said that the mere sudden closure of the accounts of the mortgage would necessarily have the effect of making the loan void.

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As Joseph Swapp for the respondent has relied on section 3 of the Transfer of Property Act and has argued that the mortgage being a registered document the lender must be deemed to have had notice of the same but it is not the duty of the lender to have disclosed the defect in his title to the lender, the lender cannot rely on section 3 and say that he is absolved from his liability to disclose the defect because the lender must be deemed to have had constructive notice of the same. To hold to the contrary would mean that under section 30 of the Transfer of Property Act, a vendor need disclose any defect in his title if the defect proceeds from his having executed a registered transfer prior to the date of the transfer in question. We do not think section 3 of the Transfer of Property Act can help learned counsel.

He has, however, argued that the case not having been brought on the facts suggested here, the question whether the defendant was informed of the mortgage was not properly gone into in the lower court. Learned counsel has also pointed out that according to the defendant's own statement it was in August or September 1947 that he came to know of the mortgage to favour of Bhagwan Das and yet he continued to run the mill and did not stop its working till the 31st of November 1947 as admitted by him in the witness dated 13th of December, 1947.

The question of law was not properly approached in the lower court, and the defendant did not allege

that on coming to know that the lease could not guarantee his years possession to the lease and the lease's possession was liable to be disturbed by the mortgagee enforcing his mortgage, the contract of lease became voidable and the lease had avoided the contract within a reasonable time after discovery of the truth and that he has ever since disclaimed any benefit and repudiated any liability under the contract (see *Moloney v. Lenn* of England, Second Edition, Vol. 12, page 118, paragraph 167). In *Sprague Brown v. Bosc*, on *Accountable New Driveway*, 1914 Edition, page 217 paragraph 186, it is pointed out that where the party complaining is on the defensive, it is incumbent on him to allege in his pleading that from the time when he first acquired knowledge of the undisclosed fact he has taken no benefit, exercised no right, made no claim, and repudiated no interest or liability, under or in respect of the contract on which he is being sued.<sup>1</sup>

As we have already said the plea taken in the written statement was that the contract was void for reasons given in paragraph 5 of the further plea which was to the effect that the plaintiff has no right to give the Mill on lease for more than a year, without the written permission of the mortgagee. The plaintiff, unconsciously out of frustration and dishonest motives, concealed this fact and did not mention it to the answering defendant. Under the provisions of section 45 A and section 7 of the Transfer of Property Act, the lease amounted to contrary to law and is unenforceable.<sup>2</sup> Not only no plea was taken but it does not appear from the correspondence or the evidence that the defendant stopped running the Mill on the 15th of November, 1957 on coming to know of the mortgage. There is also no explanation why the defendant continued to run the Mill till the 26th November, 1957, if he came to know

of the defect in August or September 1937 as was admitted by him. There is further nothing to show that on coming to know of the mortgage the defendant ever required the plaintiff to secure him ten years quiet enjoyment under the lease by either getting the mortgage released or by redeeming the mortgage. Retains is placed on behalf of the plaintiff on account of the Indiana Contract Act (see IX of 1935) that a party to a contract has a right to put an end to the contract when the other party has refused to perform and disabled himself from performing his promise in its entirety and, as has already been said, it is urged that there was no real danger from the mortgage and in case the lease wanted further satisfaction, the plaintiff if called upon would have been able to give that satisfaction.

We have already said that it was for the first time that in the written statement in suit no. 18 of 1937, a plea was taken based on the mortgage deed and, even in that written statement, the plea taken was that the lease was invalid null and void and was not binding on the contracting defendant as the plaintiff had not disclosed to the contracting defendant that the mill and the mill stood mortgaged to Niagara Ice Bank. It was not said anywhere that the defendant apprehended that he would not have quiet enjoyment for a period of ten years as guaranteed under the lease and without such guarantee he was not prepared to abide by the terms of the lease.

It appears from the correspondence on the record that the defendant was not able to work the mill profitably and therefore stopped working it on the 15th of November 1937 on the ground that he had been misinformed about the working capacity of the mill and that the mill was not in working order at the time when the lease was granted. These points were

1.4. stated in the previous decision as also in the written  
statement in this case and were made a subject matter  
of an issue on which the finding of the lower court is  
against the defendant. The same points have also  
been raised before us and we shall deal with them pre-  
sently. We may, however, mention that it was not  
only not pleaded by the defendant that he would not  
have taken the property on lease if he had known that  
there was a risk of his not being able to enjoy quiet  
possession for ten years but learned counsel has failed  
to point out anything on the record to prove that the  
lease would not have accepted the lease if he had known  
of the clause in the mortgage. There is also nothing  
in the record to show that the defendant stopped the  
working of the mill on the 25th of November, 1947,  
because he came to know of the clause in the mortgage for  
the mortgage would not be bound by a lease for a  
period of more than one year if his consent to grant such  
a lease had not been taken.

In the lower court it was argued that there was a mis-  
representation made to the defendant about the working  
capacity of the mill and the conditions in which it was  
to the time when the lease was granted and the defend-  
ant was misled on both the points. In the representation  
made by the lease and by reason of this fraud or  
misrepresentation, the lease was not binding on him.  
The same arguments have been advanced in this Court.  
Reference is placed in paragraph 16 of the plea which  
is as follows:

"That the Second Party is entitled to grant 2,500  
mounds of wheat in 24 hours in the said Lockhart,  
that he is further entitled to keep the said house  
running for 24 hours or less."

And as regards the defendant's condition of the machinery, the statement of Mr. Langdon <sup>the</sup> <sup>best</sup> <sup>evidence</sup> recorded in the present case on the 15th of November, 1927, copies of which have been filed by both the parties and have been exhibited as Ex. 34 and A. 14. In our view the lower court wrongly admitted the statement as evidence in the requirements of section 33 of the Indian Evidence Act were not fulfilled. The plaintiff was not asked any question about Mr. Langdon or his whereabouts and Deep Chand did not say that Mr. Langdon was either dead or could not be found or was incapable of giving evidence, or was kept out of the way by the plaintiff or his presence could not be obtained without an amount of delay or expense which, under the circumstances of the case the court considered warranted. Even if Mr. Langdon's statement is admitted as evidence Mr. Langdon only speaks of the machine in which the roll was when he took over charge in July, 1927. He admitted that he could not say the exact condition in which the machine was handed over to the lessee. In the lease itself there is a covenant between the lessor and the lessee that the lessee was handing over the machinery in good condition and the lessee was taking possession of it in good condition; that the lessee would be responsible for the running repairs, for other extraordinary repairs the lessor would be responsible, and that at the time of the expiry of the lease, the lessee would be responsible for the running repairs for other the lessor. From this written agreement it must be assumed that the lessor and the lessee were both concerned as regards the condition of the machinery at the time when the contract was entered into and there is nothing to show that there was any such latent defect in the machinery which would go to avoid the lease. As a matter of fact the lessee worked the machinery for a period of more than one year and, according to the evidence on the record, other lessees have been working



get from the defendants. The rent received under the lease was Rs 30,000 a year. On the 26th of December, 1932, the leasee gave notice that he had stopped working the mill with effect from the 25th of November, 1932. On the 15th of February, 1933, the leasee got back possession of the property but he has only paid Rs 24,000, 1933, i.e. 10 he made a claim that the leasee will remain liable for damages. We have already said that the leasee had filed a suit on 18 of 1935 on the 22nd of July, 1937 for arrears of rent. This case was finally decided by the High Court on the 12th of September, 1940, and the judgment of the High Court is in Rs. 4.7. The learned Judge calculated the amount of rent due up to the 25th of December, 1932, and passed a decree up to that date. It is therefore the common case of the parties that nothing can be claimed up to the 25th of December, 1932. The factory was leased out by the plaintiff to Lal Singh and another on the 26th of July, 1936. Under this lease the leasee was to work the mill from the 1st of August 1936 to 31st of July 1941, and the rent reserved was Rs 21,000 per year. Lal Singh, however, it was said entered into possession from the 2nd of August, 1936, so that from the 25th of December, 1932 to 2nd of August, 1936, the mill had not been let out and earned no income. The damage claimed for this period was Rs 15,120 12 10. The lease in favour of Lal Singh was for a period of three years and the rent reserved during that period being with Rs 21,000 per year the plaintiff claimed damages at the rate of Rs 4,000 a year, that is Rs 12,000 in all. On the 1st of July, 1941, a fresh lease was executed in favour of Shri Devdas Kripa Ram Badha Kishan and this lease reserved a rent of Rs 20,000 only and was for a period of one year commencing from the 25th of July, 1940 to the 24th of July, 1941. For this year, the damages claimed were at the rate of Rs 5,000 per year. Though the lease is in favour of Dev

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Devdas Kripa  
Ram Badha  
Kishan  
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THE  
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Krupa Ram Rudra Kathan was only for a period of one year then continued in possession all along and have failed to deliver back possession of the mill to the plaintiff. On the 8th of August, 1942 the plaintiff filed a suit against Deewan Krupa Ram Rudra Kathan in his capacity being suit no 42 of 1942. The suit was decreed on the 8th of February, 1945 and a First Appeal no. 30 of 1945 was filed in this Court and is still pending. On the 15th of March 1946 after the suit for possession was decreed the plaintiff filed a suit no. 30 of 1945 for surplus profits from the 8th of August, 1942 and claimed the sum of Rs 5,000-0-0 only. The hearing of suit no. 30 of 1945 has been stayed under section 10 of the Code of Civil Procedure, pending the decision of First Appeal no. 30 of 1945. The lower court has held that the sum money payable to the plaintiff in accordance with the lease entered by Deewan Krupa Ram Rudra Kathan being only Rs 25,000 a year for the use of the mill agreed period, i.e. up to the 24th of October, 1945, the plaintiff should get future damages at the rate of Rs 2,500 a year. The amount decreed by the lower court is then Rs 52,500 11 10.

Learned counsel has raised two objections (1) that the figure withheld for a period of 15 days when it was said that the plaintiff had recovered some money back from Lal Singh as also from Deewan Krupa Ram Rudra Kathan was wrong and the surplus amount was not only Rs 525-1 but a little more. Learned counsel had pointed out to work out the figures and give us, but they have not done so so far. The other point raised is that for the period during which Deewan Krupa Ram Rudra Kathan have been holding over after the expiry of the lease in their favour the amount payable by them should not be calculated at the rate of Rs 25,000 only but at a much higher figure. The defendant had in the written statement taken two pleas, firstly that the plaintiff had



deliberately leased out the mill to Dewee Krupa Ram Radha Kathan at a low figure and that the mill should be let out for much more, and, secondly, that since the commencement of the Great War the lease money had at least doubled itself every year. On the first objection the lower court decided in plaintiff's favour and pointed out that the lease was executed after proper advertising rates through a reputed firm of brokers. No arguments have been adduced so far on the point as to the Great War.

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As regards the other plea, no satisfactory evidence was led to prove the allegations made in the written statement nor was the plaintiff's case examined on the point. As a matter of fact not one question was put to the plaintiff whether he could not have let out the mill for a higher rate. The defendant produced a witness Bhakima Nand who has been disbelieved, and in our minds rightly so. Though the plaintiff was not asked a single question in cross-examination, when the cross of plaintiff's evidence when the defendant came into the witness box, he said that since the outbreak of the Great War the mill could be let out for Rs 60 000 to Rs 14,000 per year. This obviously is incorrect. The lease in favour of Dewee Krupa Ram Radha Kathan was executed on the 3rd of July 1914, and it fetched only Rs 28-0-0. If the point had been put in issue and question had been asked on the point raised counsel for the plaintiff has urged that he could have shown that on account of the Defence of India Rules and other controls, it was impossible for the plaintiff to have let out the Mill at a higher rate. There is no satisfactory evidence in show that the mill could be let out at a higher rate and there is therefore no reason in matters with the decision of the lower court on the point.

In this connection it may be remembered that where there has been a branch of concern which was in run for several years and as a result of the branch



applied for a stay of execution of the decree on the 24th of November, 1944. A temporary stay was granted and notices were issued. On 24th December 1944 the interim stay order was made absolute. Even when granting the stay, the reasons of the court does not appear to have been drawn to the fact that the decree holder by reason of the stay would suffer loss as he will not be able to get any *pendente lite* or future interest. The result has been that the amount decreed on 7th August, 1944, as a cost brought on 27th November 1945, has remained unutilised up to date, for a period of almost ten years. Learned counsel for the respondent set out as to show how *pendente lite* and future interest, but no relief having been asked for to that effect in the cross objection filed on behalf of the plaintiff, we cannot grant the prayer. In the cross-objection a number of other items were claimed but learned counsel for the respondent has confined his argument merely to publication and other charges referred to in estimating the damage. The plaintiff would, no doubt have been entitled to get the same, provided he had given satisfactory evidence to prove it. We agree with the lower court that the evidence on point is not satisfactory.

In the result the decree passed by the lower court is affirmed and the appeal and the cross objection are both dismissed with costs.

*Both appeal and cross objection dismissed*

## APPELLATE CIVIL.

Before Mr. Justice Agnew and Mr. Justice

Randall Knight.

MOHAMMAD SABIR ALI (Plaintiff)

1904  
February 17

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TABIR ALI AND OTHERS (Defendants).

**Mohammedan Law.**—Waq'fat-ul-ahad—Delivery of possession and retention of same, after co-terminus Waq'fat. Falsifying Act, 1828 s 3 and 4 scope of—Quth Emdin Act, 1845 s 4 11 12 and 13 scope of—Waq', validity of. *P. M.* the daughter of the Yaguba emirs in Baluch died in 1850. Her younger brother *P. B.* succeeded her as emir under the family custom and under the provisions of the Quth Emdin Act. *P. B.* died in 1875 and was succeeded by his only son *Aghtar Ali* who during his lifetime acquired certain other properties of adoption and non-adoption descent. On 23rd August 1875, *Aghtar Ali* executed a waq. intended and named a waqf of his estate property for the benefit of himself, his family and successive generations after generation. He was the executor for his lifetime as to himself his second son, *Mohammed Umar* defendant no. 1 and after him his other sons and then his other descendants, subject according to the rule of primogeniture. Some women were to be paid to themselves and to maintenance allowance to the mothers of his family generations after generation. *Aghtar Ali* died on 23rd February, 1877. The plaintiff being the eldest son of the first son of *Aghtar Ali* claimed succession to the property under the rule of limited primogeniture by defendant no. 1 being in possession of the property. Defendant the next in the mother's of the waqf of 1875.

*Held* (1) that no delivery of possession is required in the case of waqf specially when the first testamentary happens to be the waqf himself and no objection can attach to the testator's son to get the trustees of *Kutub* after of after the waqf had been made.

*Mohammed Umar v. Rahmatullah* (1), relied on.

(2) Where a waqf after making a *Kutub* the waqf dies with the property in his own or puts the property in his

Waq'fat at Lucknow  
C.I. 157 (1904) at 456

was not done any of the wage will only amount to a breach of trust and would not in any way affect the validity of the wage if the wage when made was otherwise valid.

(2) That the conversion of the entire income of the wage property into a trust for the benefit of the wage will be finally and conclusively and with reservation as to its mode for their maintenance and support up to the point of time in which the phrase Maintenance Allowance is used in s. 10 of the Provincial Code and s. 4 of the Transfer of Property Act but is a larger sum of personal use for all local purposes.

*Engel Abrahamson v. Mrs. Abba Elstern* (1) *Abdul Karim Adnan v. Khatunba* (2) *Simla Ram v. Jas. Pater* *Mahm. Singh* (3) *Engel Gertrude Rae Mahony v. N. M. C. T. C. P. Pater* (4) considered.

(5) That the mode of alienation mentioned in s. 11 of the Outh House Act requires the right of a usufruct to alienate his property in any other way. The usufruct of usufructuary conferred by s. 4 of the Act does not actually and necessarily have reference to the mode of transfer mentioned in s. 11. If the usufruct is not an alienation of the wage specified in Section 11 it cannot be made.

*Charles Anthony Treane v. General Carter* (6) relied on.

(7) That a wage alienated as a gift to God Almighty and is permissible to be made under the Outh House Act provided it does not contravene the purposes of s. 12 of the Act and provided further that it is in the form mentioned in s. 14 of the Act.

(8) That though the corpus of the wage property is transferred to God Almighty yet its usufruct is transferred to persons designated in the wage provision after provision. The usufruct does not as a gift is contrary to the provisions of s. 12 of the Outh House Act. The transfer of the usufruct of an estate is a transfer of a right in an estate in such an estate.

(9) That a gift for religious and charitable purposes are mentioned in s. 14 of the Outh House Act is a gift created by s. 11 and therefore covered by s. 15 of the Outh House Act. s. 14 cannot be considered to be an exception to s. 12 and all gifts for religious and charitable purposes must conform to the provisions of s. 12.

(10) That a wage alienated in mortgaged business is contrary to the provisions of s. 12 of the Outh House Act.

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long English who owned considerable property known as Tigras Lutar in the district of Baluch. At the time of the accession of Qudh, died during the minority and was succeeded by his son Thakar Fakh Muhammad who was subsequently recognized by the Government as the taluqdar of the Tigras Lutar Thakar Fakh Muhammad died in 1890 without having any male issue and on his death his younger brother Naki Baluch, succeeded him as taluqdar under the family custom and under the provisions of the Qudh Estate Act. Naki Baluch died in 1899 and was succeeded by his only son Thakar Aghar Ali. Thakar Aghar Ali in his lifetime acquired certain other properties of taluqdar and non-taluqdar character which are detailed in the schedule annexed to the plaint.

On the 28th August 1903 Aghar Ali executed a deed of waqf and sold by means of which he created a waqf of his entire property for the benefit of himself his family and descendants generation after generation. He was to be the mutawalli for his life time, and there after his son Muhammad Umar defendant no 1 and then from his other sons and then his other descendants selected according to the rule of primogeniture. Some moneys were to be paid to charities and as maintenance allowances to the members of his family generation after generation.

On the night of the 15th February 1905 Thakar Aghar Ali proved away leaving behind him the properties which according to the plaintiff, were those described in the Schedule A to I appended to the plaint. On the death of Aghar Ali disputes arose about the succession to and possession of, his property. Defendant no 1 Muhammad Umar claimed to be entitled to the entire property as mutawalli under the waqf deed dated the 28th August 1903 while the plaintiff

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 Muhammad Ali

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being the eldest son of Nizam Ali deceased succeeded to the property under the rule of local custom. The Deputy Commissioner of Bahawalpur then stepped in and the properties mentioned in Schedules B, C, I and H were attached. The property mentioned in Schedule A was subsequently attached under the decree of the Sub-Divisional Magistrate, Bahawalpur, and the property mentioned in Schedule D was taken possession of by defendant no. 1 Muhammad Umar, the second and the then eldest surviving son of Asghar Ali. There is followed by a protracted litigation with regard to mutation of names in the Revenue Courts, and ultimately an order for mutation was passed in favour of Muhammad Umar, defendant no. 1. This order was confirmed by the Board of Revenue on the 11th May, 1914, and the properties mentioned in Schedules A, B, C, E, F and H were delivered to defendant no. 1.

Defendants nos. 4 to 7 are said to have obtained possession of item no. 2 of Schedule E and the bulk of the property in Schedule F, while defendant no. 2 is said to have entered into possession of item no. 3 of Schedule E and defendant no. 3 of item no. 1 of Schedule E.

Talwar Muhammad Satar Ali, plaintiff, then contested the suit, which has given rise to this appeal in forma pauperis, for the possession of the entire property left by Asghar Ali and for means profits on the village lands that he was the eldest son of Nizam Ali who also was the eldest son of Asghar Ali, and as such was entitled to succeed to the property of Asghar Ali under the rule of local custom in accordance with the Quoth Quoth Ali and the family custom. He denied the execution, execution, genuineness and validity of the deed alleged to have been executed by Asghar Ali and relied upon by defendant no. 1 for his title to



the property. It was further alleged by the plaintiff that the said deed if any had been obtained by a fraudulent misrepresentation, the details of which and the other grounds on which the validity of the deed is challenged are mentioned in paragraphs 11 to 17 of the plaint. The plaintiff also challenged the validity of the said deed obtained from him by defendants 1 and 2 in respect of the bulk of the property on the assurance that they would finance and support the litigation which they had no intention to do.

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Appendix B

The defendants were, therefore, and to be in wrong and possession of the entire property left by Asghar Ali and the plaintiff claimed to be the rightful owner of the property. He claimed damages to the extent of Rs.1,500 and mesne profits to the tune of one lakh or any larger amount which might be found due. An alternative prayer for arrears of maintenance, amounting to Rs.4,500 and possession of item no 2 of Schedule B attached to the plaint was also made in case the plaintiff was not found entitled to the relief of possession of the said property.

The defendants contested the suit. Defendant no 1 admitted the pedigree set up in the plaint, but alleged that it was incomplete. A fuller pedigree was appended by him to the written statement. He admitted that Thakur Asghar Ali succeeded Mohommad Naba Bahadur and thus inherited most of the property owned by Feroz Mohommad, but it was denied that Naba Bahadur, the younger brother of Feroz Mohommad, succeeded to his entire property on his death in 1868. It was asserted that the deed of waqf alimulad executed by Thakur Asghar Ali on the 26th August, 1875, was duly executed, registered and acted upon and that no fraud, or due influence or coercion as alleged by the plaintiff had been practised upon him. It was further alleged that

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area of the waqf was held to be invalid, it would still be operative as a will, and defendant no. 1 was entitled so far as to the whole of the estate of Agha Ali as his successor. A plea of limitation was also made. Defendants 2 and 3 adopted the written statement filed by defendant no. 1. The defence of defendant 5 was that they were the owners of the property mentioned in Schedule D, and of items 2 and 3 of Schedule E. They also supported defendant 1 as to such right to the possession and validity of the waqf deed. Defendant no. 7 adopted the written statement filed on behalf of defendant 1 and 5. Defendant no. 4 was called that the rule deed executed by the plaintiff in his lifetime was valid and binding, and that the plaintiff was not entitled to recover the property comprised in the rule deed.

The lower court found that the waqf deed dated the 22nd August, 1924, was duly executed by Thakur Aghar and was a perfectly genuine and valid document and as such binding upon the parties. It held that Thakur Nazeem Ali was the eldest son of Agha Ali and the plaintiff being the eldest son of Nazeem Ali was entitled to inherit only such property as was left by Agha Ali at the time of his death by virtue of a family custom and under the provisions of the Quaid-i-Azam Act. The plaintiff therefore succeeded in his claim only in respect of such properties as were not the subject of waqf viz items 13(b) and 13(c) of Schedule A of the plaint. He was not found entitled to any money profit or damages but his claim to recover Rs.258,125 in arrears of ground tax for the years 1927 to 1st March 1934, under the terms of the waqf deed was upheld. The plaintiff's right of residence in Luckh Mahal was upheld in item no. 2 of 1st B was also found satisfied.

The issues relating to the character of the various items of property were also decided by the lower court, but it is not necessary to recite its findings, as the findings on these issues have not been challenged in argument on appeal. Dissatisfied with the judgment of the court below, the plaintiff has come up to this Court in this appeal.

During the pendency of the appeal, Muhammad Umar defendant no. 1 and Muhammad Ali defendant no. 4 have died and their heirs have been brought on the record. In this appeal the only points argued before us relate to the genuineness and validity of the waqf deed executed by Asghar Ali. The waqf deed itself has been challenged on three grounds:

- (1) That Asghar Ali never intended to create a genuine waqf and that it was a paper transaction never intended to be given effect to, (2) that it is invalid because it is contrary to the provisions of Muhammadan Law, and (3) that it is contrary to the provisions of the Credit Estates Act and therefore, invalid.

The first point which we propose to deal with in the outset is if Asghar Ali did, as a matter of fact, make a genuine and bona fide waqf deed. The due execution and due attestation of the waqf having been established and not being challenged in this appeal the issue lay upon the plaintiff to prove by cogent and convincing evidence that the deed was a colourable or a fictitious transaction. The oral evidence led by the plaintiff on this point comprises of the testimony with regard to one Muhammad Shah (P. W. 2) who served Asghar Ali as a mawlat in his workshop for a brief period of fifteen months in 1924-25. He states that once in the year, once in 1923, Muhammad Umar

the defendant came to Agbar. He said told him that Niam Ah had applied for the case to be taken over by the Court of Trade, and Mohammed Umar took Agbar Ah inside the house. In doing so, according to the witness, admitted that Agbar Ah did not request of Mohammed Umar the source of his information nor did he make any comment. Agbar Ah is a peaceful man, would have naturally made some inquiries to find out if the information conveyed to him by Mohammed Umar was correct, and it is difficult to believe that this disorder and unrulyd pool of information should alone have caused in the mind of Agbar Ah a belief that Niam Ah, his eldest son, had turned against him and had been making efforts to deprive him of his property. No application was made by Niam Ah to the Government, and there is no documentary evidence on the record to prove that Niam Ah had any such sinister motive if it is sought to be imputed to him.

As against the sole & testimony of Mohammed Umar, the defendant has produced some respectable witnesses in witness. Niam Nwerekah, the Khan, nephew of Alabul Eweke, Boluwah who is an important witness on this point, since that, his house, was close to the house of Agbar Ah and that he had intimate relations with him. He was on visiting terms with Agbar Ah. He further states that in May, 1953, Agbar Ah had a talk with his uncle, the late Nwerekah Mohammed Ali Elum C. S. I., in his presence and that it was in connection with the transfer of a small old valued Agbar Ah wanted to preserve the property from being visited by his sons and asked for suggestions from Nwerekah Mohammed Ali Elum. Nwerekah Mohammed Ali Elum made some suggestions but the only suggestion which appealed to Agbar Ah was the transfer of a small old valued. Obviously, according to the statement of this

witness, Anglin Ah decided upon creating a waqf al-ahwal with subsequent life estates in various persons. He also showed a draft of the proposed waqf al-ahwal to the witness and told him that the draft had been prepared by alids. Two or three days after this talk with the witness, Anglin Ah came to the uncle of the witness at about 4 or 5 p.m. and told him that he had got the waqf deed, which was decided upon, prepared. Ghulam Hama Khan (D. 15-1), is another witness. He was a big Mughlane and paid Rs. 1,000 as land revenue. He states that he knew Anglin Ah who was a friend of his and that he had once told him that he had no idea of creating a waqf al-ahwal in order to safeguard the property from alienation and for charitable purposes and that for an 18 months later he told him that he had created the waqf al-ahwal Bays Bepindat Baiton. Such a change of purpose shows that he was no serious person. Anglin Ah belonged to Tipais and died during the course of a talk on affairs of the estate generally he had told him that in order to save his property from being squandered, viz. by his successors, he had created a waqf al-ahwal. This witness was a headstrong Rajpoot and paid about two lakhs as land revenue.

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The statements of these witnesses clearly show that the view that there was no apprehension on the mind of Anglin Ah that his property was likely to be taken over by the Court of Wards and that the waqf was only a paper transaction created in a weak, senile or feeble, the property from being taken over by the Court of Wards was wholly unfounded. The evidence further shows that Anglin Ah had a religious bent of mind and was both pious and vigorous. The fact that Anglin Ah survived considerably wealth and made considerable acquisition of property in his lifetime is

Ex-  
hibit 14  
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hibit 15  
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hibit 16  
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hibit 17

also a pointer in the same direction. It is therefore no wonder if the idea of safeguarding the property which he had built up against dissipation in the hands of his successors, was suggested in his mind.

Reliance has also been placed on some documentary evidence relating to the course of conduct and designs of Anglin Ak with regard to the property subsequent to the making of the will. They are copies of some plans and written statements in which Anglin Ak described himself as the proprietor of the property, even after he had executed the will. Ex. 18 is a copy of a plan in a suit instituted by Anglin Ak in the Court of the United States against his daughter in the case of Ex 100. In paragraph 1 of the plan Anglin Ak described himself as the owner of village Brumson, Ex. 102 is a copy of a plan in a suit instituted by Hu Hingman the Minister of Kephahle against Anglin Ak for the possession of some land alleged to have been entrusted upon by Anglin Ak. In paragraph 2 of the written statement Ex. 117 Anglin Ak described himself as the owner of village Gondo Busha which was also included in the will deed.

It has also been urged that no mention is made in any of the wills that the will deed had been executed. It is to be borne in mind that Anglin Ak appeared himself as the first defendant under the will deed and assumed in himself the right to appear jointly and not the mere trustees of the property in any manner he liked for his own benefit for the benefit of his dependents and the charitable purposes. It is therefore not in all surprising if he did not think it necessary to apply for amendment or did not make any declaration as to calling the property back in his own name after the will had been executed. Moreover, the subsequent conduct of a transferee in dealing with the

transferred property may be taken not only if it is of sufficient maturity in establishing the terms of the transaction at the time of the transfer, or entering into the instrument. But the subsequent transfer may, due to the words of a subscription being in dispute in which the each subsequent conduct will not adversely affect the validity and genuineness in substance to satisfy the operative effect of a bona fide transaction made earlier.

The defendant has the filed copy of an affidavit made on behalf of Anglin. He is the general agent, Chiragpal Singh on the 17th December 1933 in part on 18 of 1933, in which the content of the writ that what has been clearly stated.

Lastly, it has been urged that Anglin, Mr. Russell filed a writ for a declaration that the writ filed was a document submitted a few months before his death and that led to the conclusion that the deed was in fact a document submitted. This was a passing when Anglin, Mr. died and was solemnly withdrawn by his successors. It is difficult to find on the basis of that circumstance that the deed was genuine. Evidence has been led to prove that during the last years of his life his relations with his son Mohammed Iqbal became strained and he did not like the idea of Mohammed Iqbal succeeding him as a merchant and it was to give effect to this disposition that he executed a writ for a declaration that the contents of the writ filed Nanda Nanda, Mr. Khan and Chaudhary Khan were that the writ was the outcome of a disagreement between Anglin, Mr. and his son Mohammed Iqbal and that Anglin, Mr. never intended to execute the writ and had definitely told Nanda, Mr. Khan that he would withdraw the writ. When the court went into the writ of Anglin, Mr. was in filing the writ at a difficult to know its value. From it Anglin, Mr. changed his

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and decided upon cancellation of the wrap deal. It would not lead to the conclusion that he had no intention of making a bona fide wrap when he entered the wrapdeal itself.

A number of rulings have been used in the law as support of the contention that a wrap becomes complete when a declaration in this effect is made by the wrap and no delivery of possession is required. It is unnecessary to refer to all these rulings as none of the Full Bench decisions of the Court in *Mohammed Yousif v. Alimuddin* (1) in which the law has been considered. No delivery of possession is therefore required in the case of a wrap especially when the law incorrectly happens to be the wrap himself and no consideration can attach to the contract to get the intention of a contract effected after the wrap has been made. Even if a wrap after making a bona fide wrap deal with the property is his own as per the property to his own use, then his act of his will only amounts to a transfer of title and would not in any way affect the validity of the wrap if the wrap when made was otherwise valid.

We are therefore satisfied that Aggarwal entered into a wrapdeal with due intention with regard to completion and intention and that he did so of his own free will and with a bona fide and genuine intention of creating a wrap.

The wrap in question was never challenged for the reason that it was contrary to the provisions of the Mohammedan Law. The objection was based upon three grounds, firstly, because the wrap does not provide for the intention to deliver as required by law, secondly because there is no express transfer of the corpus to God, and thirdly, because the wrap is void.

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for himself the entire income for his life time, and then went beyond the purposes of Muslim law, which only authorizes reservation of income for the maintenance and support of the wife and her descendants.

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Before we deal with them, and other aspects of law, the concept of property, under the Mishwanatha Law, and the essential characteristics of a valid deed in India, is noted. Mishna Law does not recognize the splitting up of ownership of land into various shares vested in persons of different title, land and separate copies, or in person of different capacities in the same, as valid. It is an indivisible. What Mishna Law does recognize and rest on is the distinction between the corpus of the property itself (real) and the usufruct in the property (personal). Once the corpus of property, the law recognizes only, the basic dominion, heritable and transmissible as point of time, and where, a gift of the corpus seeks to impose a condition inconsistent with such basic dominion, the condition is rejected as repugnant. Her interests limited, in point of time can be carried in the usufruct of the property, and the dominion over the corpus takes effect subject to any such limited interest, as per the *Kazanchi H. Khan v. Sarda H. Khan Khan (I)*. Consistent with the basic conception of property, a gift is, according to the Yasa, whose opinion has been accepted in India in this matter, an absolute transfer of ownership from the donor to God Almighty for the purpose that its usufruct shall be applied to purposes recognized by Mishwanatha Law, as religious and charitable.

**Field use of two lands—public and private.** The scope of the property in both kinds of trusts rests on God. The usufruct of the property as a public trust is strictly devoted to religious and charitable purposes.

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banking the public or large or the poor. In a *waqf* which is called *waqf al-awlad* the income of the property is mainly devoted for the benefit of the *waqf*, his family and his descendants generation after generation. It is a peculiarity of Mohammedan Law that the maintenance and support of one's self and one's heirs and family is considered a religious and charitable purpose and property can be tied up in perpetuity for such a purpose although under the ordinary law, such tying up of property would be unlawful. At one time it was held that unless a *waqf* intended for a substantial benefit for religious and charitable purposes the tying up of the property even for the benefit of the descendants of the *waqif* was invalid—see *Shirah Mohamad Ali v. Chaudhry* (1), *Abdul Gafar v. Karamadhar* (2), and *Abdul Fatah Mohamad Shah v. Karamadhar Chaudhry* (3). Section 3 of the *Waqf Validation Act* (VI of 1913) however, declared that it was lawful for a Muslim to create a *waqf* for the maintenance and support wholly or partially of himself, his family, his children or his descendants provided that the ultimate benefit is in such a case expressly or impliedly reserved for purposes recognised by the Mohammedan Law as religious and charitable. Section 4 of the Act declares that such benefit for religious and charitable purposes could be postponed until after the extinction of the family, children or descendants of the *waqif*.

The question is whether the *waqf* is not valid, no provision for charity after the extinction of the line of the *waqif's* descendants?

The *waqf* in question mentions that it was made under the provisions of Act VI of 1913 to create a per-

person) shall be himself for his own and for charitable purposes. The charitable purposes mentioned in para (a) (b) and (c) are—

(a) to clear and make repairs of the mosque mentioned therein;

(b) payments to pilgrims to Mecca; and

(c) instruction on Shari'ah and help of the poor and providing Madaris students.

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In paragraph II it is mentioned that "If God, in His mercy, at any time should be vouchsafed to the effect of making the said property shall be transferred to the Trustees of Charitable Endowments and the Government shall have the power to make proper arrangements to spend the income for those religious purposes which have been mentioned in para 3 above (a) and (b). It is therefore clear that there is no ultimate bequest for charity. It is not necessary to consider the point that even if there was no express mention of the ultimate bequest to charity on failure of the line of the descendants of the waqf such a gift would be implied by the mere fact that a waqf had been created.

Is the waqf in itself bad because it does not mention the ownership of the property to God?—

It is indeed true that there is no express mention in the deed of waqf that the corpus of the property is being transferred to God, but the law does not require such express mention. The definition of waqf in Art VI of 1913 does not require that there should be an express transfer of the corpus to God. From the fact that a waqf has been created for the purposes which are considered by the Mohammedan Law to religious and charitable it is implied that the waqf has been created

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 Appendix I

and the custody of waqf property in perpetuity to God Almighty.

The question whether the waqf is created because the waqf has reserved to himself the power to spend the income of the property in whatever manner considered proper by him, is now to be considered. First, graph 1(a) of the waqf provides:

That for the life time I shall be the mawla and I shall have the power to spend the income of the property in whatever manner considered proper for myself my near and relatives and for charitable purposes.

The phrase "for himself, his heirs and relatives" clearly means "for the maintenance and support of himself, his heirs and relatives."

The Waqf Vohidung Act, VI of 1913 does not give criteria as to amount or proportion of the income of waqf property that may be reserved by a waqf for the maintenance and support of himself, his family and dependents. The entire income of the waqf property may be reserved for this purpose. The words "wholly or partially" in section 3 of the Act have reference to the income of the waqf property and not to the maintenance and support of the waqf and others. When the entire income is thus reserved for the waqf for himself and children, a question arises whether the words employed are "maintenance and support" or "use" or "benefit" or the like. Both these expressions are indifferently used by Mohammedan jurists in meaning one and the same thing. Amerr Ali has collected the various views of the jurists on this subject at pages 280 to 285 of Volume I of his 'Mohammedan Law, 4th Edition.

\* The Kuran reports from Jibreel that the Prophet (may God's blessings be with him) declared that



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right of food or something else with a condition, that the whole or part of it shall be for himself while he lives and after him for the poor, the rule is valid according to Abu Yusuf, and the jurists of Balkh have adopted his opinion and ruled accordingly, and the Faḥm is in conformity with this opinion as an endorsement to the ruling of which.

Agree. If the valid were to say: This is a rule laid down by Almighty God and for the man with, will pass its produce to me while I live without adding anything more, it would be lawful, and after his death, the benefit will go to the poor. (Page 194)

Benefit to him of Abū Ḥanīfah— If the valid reserves the produce of the soil for himself that is if he makes it a condition in the will that during his lifetime the produce should be applied for his benefit, and after his death to the benefit of so and so or some specific object, such a will is valid according to Abū Yusuf, and the Shaḥīh (jurists) of Balkh have decided on this rule.

Gift of Baḡra.— If a man reserves the income of the soil for himself or the government that is it is valid according to Abū Yusuf. And the Faḥm has stated in his Faḥm that the jurists of Balkh have accepted the rule laid down by Abū Yusuf, and their ash Shaḥīh also decided in accordance therewith. Therefore, if he etc.

divided the whole for himself during his life time and after it for the poor, it will be valid.

Takḥīl.— Abū Yusuf has held it lawful for the valid to make a condition that the profits, either in whole or in part should be for himself for his life, and on this is the Faḥm.

**Waqf of Mahal**— If a person makes a waqf for himself, or for the children of his children, or for his own children, or makes a waqf of anything, it is lawful. (Page 296)

**Don. of Mubtazir**— If a person makes a waqf on himself, his children, descendants and posterity, and reserves the income for himself during his life-time and assigns it thereafter, and thereafter, it is valid according to Abu Yusuf and on this is the Fatawa. (Page 297)

**Kadd ul Mubtazir**— It is lawful to reserve the produce of the waqf for one's self according to Abu Yusuf.

According to Baidar, one of the greatest of Hindu jurists whose authority is recognized as undisputed throughout the Hindoo world. If a man creates a waqf with these words, this my land is a *maluk* *maluk* for my children or my wife (descendants) it is valid according to both Abu Yusuf and Mohammed.

The same rule is enounced in the *Quart ul Ahkam* and the *Mawarik*. If a person appoints the usufruct for himself during his life-time and thereafter, and thereafter, it will be lawful according to the second Imam Abu Yusuf and on this is the Fatawa.

**Majma ul Ahkam.** A waqf in favour of one's self is valid according to Abu Yusuf, and on this is the Fatawa. (Page 297)

It appears to us that the reservation of a waqf of the entire income for the use of himself and his descendants is for their maintenance and support within the meaning of the Act. This view finds support from the observations of Mulla, C. J., in *Boyer Mahomed v. Mir Abdul Khayum* (1). The other learned Judge in the above case followed the view of Chittani. ] (1)

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he then says in *Al-hal Karam Adamullah's v. Mohamada*:  
 (1) CARROLL, J. observed that when a waqf receives  
 the entire income for his use he is creating a life  
 interest in the usufruct for his own benefit, and that  
 there was a difference in law between creating a life  
 interest of life interest in the income and retaining to  
 oneself the whole of the income of the trust property  
 for his maintenance and support. With all respect  
 my Lord myself unable to agree with that view. The  
 reservation of the whole of the usufruct of a particular  
 property for the lifetime of a person or persons is  
 creating an interest for life or life interest in the usu-  
 fruct in favour of that person or those persons. It is  
 wholly immaterial that the reservation is for their  
 maintenance and support or not. The creation of a  
 life interest in the usufruct of a property is valid accord-  
 ing to Mohammedan Law and a waqf *al-mawla* does  
 create a life interest in the usufruct in favour of the  
 waqf and his children. When the profits of the waqf  
 property are to be reserved for the waqf or his children  
 it is intended that they are for their maintenance and  
 support. The words 'maintenance and support' are  
 not to be limited to the reservation of life. The phrase  
 includes maintenance of one's position in life. When  
 a certain income is reserved for one's maintenance and  
 support, he is free to use it as any way he likes and  
 he has imposed no check on the use of it. The ques-  
 tion whether the income so reserved is transferable and  
 liable for satisfaction of one's debt is quite a differ-  
 ent matter. In *Al-hal Karam Adamullah's case* CARROLL  
 J. says he then went on to observe:

If what he had reserved to himself was for his  
 own maintenance that would not be transferable  
 as property under the Transfer of Property Act  
 nor could it be attachable under the provision of





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That the provisions of the Act shall have the effect to transfer to the estate of the deceased the whole or any portion of the property of the deceased after his death, and all the expenses relating to the death.

and we think that the provisions of the Act are consistent with the provisions of the Wages Act, 1911.

We now come to the more difficult point in the case, and it is whether the estate is entitled to the property of the deceased under the provisions of the Wages Act (1 of 1911).

The relevant provisions of the Act are as follows:—  
 Section 2 defines transfer to an alienation, and  
 Section 3 provides that a transferor with whom a

summary of the provisions of the Government revenue was made between the 1st day of April 1858 and the 10th day of October 1859, or to whom, before the passing of this Act and subsequently to the 1st day of April 1858, a certificate of title had been granted, was to be deemed to have thereby acquired a permanent heritable and transferable right in the estate.

Then follow the provisions relating to power of transfer and to the transfer of the estate as an estate, or interest therein. Section 11 provides as follows:

Subject to the provisions of this Act, and to all the conditions other than those relating to succession under which the estate was conferred by the British Government, every taluqdar and grantee, and every heir and legatee of a taluqdar and grantee of such kind and not a minor, shall be competent to transfer the whole or any portion of his estate or his right and interest therein during his lifetime by sale, exchange, mortgage, lease or gift, and to bequeath by his will to any person the whole or any portion of such estate, right and interest.

Section 17 of the Act provides—

No transfer or bequest under this Act shall be valid whereby the passing of thing transferred or bequeathed may be delayed beyond the lifetime of one or more persons living at the date of the transfer or bequest and the majority of some persons who shall be in existence at the expiration of that period and no person if he survives till age the thing transferred or bequeathed is no longer

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THE  
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ACT, 1936  
SECTION 11  
SECTION 12

generation after generation, which is prohibited by section 12 of the Act. As regards section 11, the learned counsel urged that it deals with the waqf in which gifts for religious or charitable purposes can be made and does not modify section 12 which even applies even to gifts for charitable and religious purposes. On the other hand, Mr. Iqbal Ahmed the learned counsel for the respondent urged that the Act is not exhaustive of all kinds of donations. It deals with transfers inter vivos only, namely, with transfers to living persons. A waqf being an alienation of property to God Almighty who is not a living person, is not a transfer within the meaning of section 11 of the Act or of section 12 and, therefore, section 11 and section 12 applies to such alienation. The Act therefore does not provide for such an alienation and as it is valid under the Mohammedan Law in which law the waqf was subject, it must be held to be valid. Secondly, even if the waqf is hit by sections 11 and 12, it is saved by section 13 of the Act which must be read as an exception to those sections. Thirdly, Mr. Iqbal Ahmed contended that in a waqf the property is transferred to God in whom it remains for ever and therefore no limited terms in favour of unborn persons are created, and that, therefore section 12 can have no application. Fourthly, he contended that the waqf is not governed by section 12 because section 12 prohibits the transfer of an estate and not an usufruct. According to him, the usufruct of an estate is not an estate at all. Lastly, he contended that, at any rate, the waqf is valid in so far as the vesting of the usufruct in favour of the persons in contrast to the case in which Ayub Ali died is concerned.

The first question to be considered is whether an alienation of a telegraph estate can be made which is not governed by the provisions of the Act.

The history of taluqdars estates has been narrated in numerous cases and it is not necessary to repeat it. Suffice it to say, that after the Mutiny of 1857 had been quelled, Lord Canning, the then Governor General of India issued a proclamation on the 15th March, 1859, declaring a general confiscation of all proprietary rights in the soil of the Province of Oudh (with the exception of the rights of a few taluqdars) and at the same time promising indulgence to those who promptly surrendered. Most of the taluqdars did surrender and secured back their estates and those who did not lost them and their estates were given to those who had proved loyal to the British Government as reward for their loyalty. This was done by making settlements with them and issuing sanads to them. Thus all the pre-existing rights of the taluqdars were first taken away, and then fresh Government grants under the terms of sanads and proclamations which were made at the time were made. The rights of taluqdars in respect of such estates were further defined by the Oudh Estates Act of 1860. Two principles may be noted in connection with this Act. First, that the rights of taluqdars and grantees to whom estates were granted by the Crown are defined in the Act without distinction of religion or caste. The personal law of a taluqdar does not enter into the picture except in so far as the Act itself imports it and secondly that in respect of the matters dealt with by the Act it is a self-contained and complete Code. In *Chander Kishore Tewari v. Suresh Bhatt* (7) the Privy Council observed:

that  
the taluqdars  
rights are  
taken away  
by proclamation of

The Oudh Estates Act is a special Act affecting special class of persons in respect of the properties conferred upon them. The Act is self





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of Property Act and does not require to be made by a written document. Witnesses may be used about the juristic personality of God as distinguished from an idol as Hindu Law. It may be stated that the same argument does not apply to the Mohomedan ownership of God Almighty who is believed to be capable of holding property, and, no doubt, has an individuality of His own and certainly exists. We are therefore, of opinion that waqfs are gifts to God Almighty and are permissible to be made under the Quoth Estates Act, provided they do not contravene the provisions of section 12 of the Act, and provided further, that they are in the form mentioned in section 14 of the Act.

Section 12 prohibits a transfer of property to a person who is either not in existence at the time when the transfer takes effect, or is not in existence even at the death of a person who was in existence at that time. Waqfahs which is a transfer in which an interest in the subject of the property is created in favour of persons who were neither in existence at the time when the waqf commenced to operate, or at the time of the death of persons who were in existence at that time. It may be observed that the rule laid down in section 12 of the Quoth Estates Act is almost in the same terms as section 14 of the Transfer of Property Act. To section 14 of the Transfer of Property Act there is an exception which is contained in section 15 of the Act which makes such transfers valid provided they are for religious or charitable purposes. In the Quoth Estates Act there is no provision corresponding to section 15 of the Transfer of Property Act (the effect of section 15 of the Quoth Estates Act will be considered hereafter).

It was argued that as often a waqfah which is a transfer to God Almighty, and not to the beneficiaries, there is no question of estate as contemplated by section 12, and as such section 12 does not prohibit



the creation of a usufructual estate. The contention is not sound. Though the corpus of the *usufruct* property is transferred to God Almighty, yet its usufruct is transferred to unborn descendants of the *usufruct* generation after generation. The usufruct, therefore, is dealt with in such way contrary to the provisions of section 12. Again it was urged that section 12 contemplates the transfer of an estate and not of its usufruct. It was pointed out that section 12 speaks of an estate and not of its usufruct and, therefore, section 12 cannot apply to the transfer of an usufruct of the estate. The argument is fallacious. Section 12 clearly mentions not the estate but also "any right or interest therein." Section 1\* will therefore apply not only to the estate but also to rights or interests in such estate. The transfer of the usufruct of an estate is a transfer of a right in an interest in such an estate. Indeed, an estate without its usufruct is an empty thing. The core of an estate is its usufruct.

The next point to be considered is whether section 18 of the Act empowers a religious or public or *usufruct* estate to violate the provisions of section 12. Section 18 enacts that the giving of property by a religious or religious or charitable purposes must be by means of an instrument of gift. The significance of this requirement can be understood only when we look in mind the various modes in which such transfers may be made under the ordinary law. The alienation of property for religious and charitable purposes may be made in three different ways, namely: by means of (1) an act of dedication, (2) an instrument of gift, or (3) an instrument of trust.

A dedication of property for religious or charitable purposes is a divesting of ownership of property still vesting it in the public at large. This can be done under Hindu Law by an unrequited act of dedication.

THE  
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114. specifying (a) the property, in respect of which the  
 endowment is created (b) the object or purpose of  
 dedication, and (c) restrictions by the founder of all  
 beneficial interests in the property. No writing is  
 necessary for the purpose *George Smith v. Tama Smith*  
 (1) nor is it necessary that there should be any person  
 to whom the possession of the property dedicated is  
 to be handed over. The founder, in his last will, may  
 leave the management of the endowment (2). The giving  
 of property for the above purposes may mean either the  
 form of a gift by the donor to a donee and there must  
 be some price to accept the gift on behalf of the donee.  
 If it is by document the Registration Act will apply  
 and a document dealing with property of the value of  
 \$500 or more will have to be registered. Fourth  
 speaking, the provisions of the Transfer of Property Act  
 will also apply to it and so the gift cannot be made of  
 property of less value otherwise than by means of a  
 registered instrument. Lastly, the giving may be  
 effected through the intervention of a trust, in which  
 case it can only be done by means of deed of trust or  
 mortgage and registered, and there must be a written  
 Section 18 of the Death Estates Act requires that the  
 giving of property for religious or charitable purposes  
 must be in the form of a gift by means of a registered  
 instrument signed by the donor and attested by two  
 witnesses. Thus a Statute would in order to be valid  
 must be in the form of a gift as required by the section.  
 If it is to be in the form of a gift it must be governed  
 by section 11 and 12. There is no reason to doubt that  
 the word gift mentioned in section 12 is something  
 different from the same word used in section 11.  
 Section 12 does not confer a right to make a gift for  
 religious or charitable purposes in writing provided

the mode of making a gift. The right to make a gift for religious and charitable purposes is to be found elsewhere that is to say, in section 11. In our opinion, a gift for religious and charitable purposes contemplated in section 14 is a gift covered by section 11 and thus, being covered by section 12. Section 18 cannot be considered to be an exception to section 12 and all gifts for religious or charitable purposes must conform to the provisions of section 12.

We are therefore of opinion that the *waqf* that is held in the present case is invalid because it contravenes the provisions of section 12 of the *Gifts Enactment Act*.

The next point to be considered is whether the *waqf* is to be set aside as a whole or whether it can be held valid in so far as it involves a benefit for the *waqf*, and as such, who were in existence on the date of the execution of the *waqf*. Where the object of a charitable trust is divided or subdivided into parts, the charity can be applied for other charitable objects provided, however, a general charitable intent clearly appears from the terms of the trust. This is what is meant by the *cy-près* doctrine. It is by applying this doctrine that a deed for charity purposes is held valid and executed by the Court, and where the testator's object has charity, but the object turns out to be impracticable or impossible, and to consume the whole fund, the doctrine operates to enable the Court to apply the whole fund or the surplus to another charity as near as possible to the testator's intention (1). The doctrine is based on the view that the testator's general charitable intention should be given effect so as much as may be practicable. Where the main object of the *waqf* is making the *waqf* turns out to be invalid, the question whether the *waqf* properly can be applied to other religious and

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 Appendix F

charitable purposes is to be distributed with reference to the intention of the testator. The document indicates that the waqf in creating the waqf in question was clearly to set up the property for the benefit of the testator himself, and his descendants and relations. He even made a provision for the entire income of the property to be spent by himself during his lifetime in whatever manner he considered proper. His deposed sons who were *musrifin* were given an absolute right to spend income was to be saved from the income of the property after deducting the expenses mentioned in the deed. The expenses mentioned in the deed consisted of two heads—first, for the benefit of certain relations and descendants of the waqf founder and second for the benefit of the poor Muslim students and for other charitable purposes. The total amount which was to be spent on the poor and other charitable objects amounted to about Rs 1,000 per annum, a very insignificant amount compared to the total income of the waqf property which was over Rs 50,000 per annum. The waqf provided that the dignity and the status of his family was to be maintained by the *musrifin* and further, that the executor in his lifetime and the future *musrifin* were to be members of the British Indian Association and that they shall be entitled to the dignity and office of *ulughat*. He further provided that after the waqf, the *musrifin* of the waqf shall be in possession and enjoyment of all movable property and all the articles of show and decorations and out of them it shall be the duty of the *musrifin* of the waqf to replace those articles which might become unworkable and such *musrifin* shall have them for his personal use after him. The waqf did not express a general charitable intent in favour of the poor or other charitable objects for the benefit of the public generally or long or out of his descendants was alive. In these cir-

conditions it would be confining the functions of the waqf to turn the waqf from a waqfiyat sukutiyah into a public waqf by applying the amount of the waqf property to public and charitable purposes. The waqf must, therefore, be held to be intended as a whole.

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But though a waqf fails as a waqf the directions contained in it for the payment of maintenance allowances and right of residence in favour of persons who were alive at the date of the death of Asghar Ali and for the expenses to be incurred in respect of education be held to be binding on the plaintiff inasmuch as the test and intention of Asghar Ali. The plaintiff's claim will therefore, be subject to these directions. These allowances and charges will be a charge on the property in the hands of the plaintiff.

Mr. Nirmalsingh, learned counsel for the appellant stated that in view of the fact that the evidence regarding the value of the movable property left by Thakur Asghar Ali was not clear and sufficient on the record, he did not press his appeal so far as it concerned the recovery of the movable property.

The result, therefore, is that we decree the plaintiff's claim for possession over the properties which were included in the deed of waqf as also over the properties which belonged to Asghar Ali at the time of his death namely, the properties specified in Schedule A and items 1 to 6 of Schedule B of the plaint. The allowances in favour of the persons alive at the death of Asghar Ali and the charges mentioned in the deed of waqf shall be a charge on the properties mentioned in the deed of waqf. The plaintiff will also be entitled to the income profits of the landed property in respect of which the sum is decreed from the date of defendant no. 1 till the period beginning from 1st of March 1912 to 31st of October 1965 on which date defendant no. 1 died.

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The plaintiff will also be entitled to the profits of the property taken from date up to the date of delivery of possession. If in the meantime any property has been taken over by the Government in pursuance of the Defence of India and Local Railway Act, the plaintiff will be entitled to compensation as and when made payable. As the property was taken possession of by the Deputy Commissioner of Bahawal on 1st of November, 1944 the profits in the hands of the Deputy Commissioner will be recoverable by the plaintiff. The Court below will calculate the net net profits recoverable from the hands of defendant no. 1 after giving credit to any moneys which may have been paid by defendant no. 1 to each of the persons mentioned in the deed of sale who were alive on the date of the death of Asghar Khan and for any moneys spent on charges mentioned in the deed of sale. The decree for money that may be passed by the court below will be against the assets of defendant no. 1 in the hands of his heirs. The court below will take the findings already recorded by the learned Civil Judge in respect of net net profits as far as they go as correct. The cost of the plaintiff's claim is demanded. The plaintiff will receive two-thirds of his cost of both the courts from defendant no. 1's heirs. The defendants will bear their own costs throughout. There costs will also be recoverable from the estate of defendant no. 1 in the hands of his heirs. The record of the case shall be sent back to the lower court for determining the amounts of net net profits and for passing a final decree in respect thereof.

The costs elsewhere is demanded.

*Appeal allowed*

## FULL BENCH (APPELLATE CIVIL)

*Before the Honourable B. Mook, Chief Justice, Mr  
Justice Dutt and Mr Justice Mukherjy*

BRIGIRATHI vs. OTHERS

First  
October 14

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## STATE THROUGH RAZIYA

**Used Previous Precedent:** *Ray Jct.* 1901 1 48(2) rule 14  
(1)—*Consolidation of India Act 1891* 126 127—*Precedent*  
14(1), 1 found by provisions of Criminal Procedure Code  
—*Provisions of 1 48(2) whether, go to the root of judicial  
case—Power of superintendence under Act 1891*

The provisions of the *Precedent Ray Jct.* do not make it  
legislative for a *Precedent* which is not bound by the  
provisions of Criminal Procedure Code to record convictions  
without specifying the offence or to refuse one sentence for  
a number of offences.

*Weld (per C. J.) and Mukherjy J. dissent.* The  
provisions of 1 48(2) of the *Precedent Ray Jct.* do not go to  
the root of the jurisdiction of the bench and if no objection  
has been taken in the transmission of such a bench by either  
party in accordance with the provisions of 1 48(2) it is not  
open to him to say, that power is a writ process under  
Act 126 or 127 of the 1891 session.

(*Per C. J. and Mukherjy J.*) Through Act 126 can be used  
to be the death administrative superintendence, the power  
of superintendence conferred by Act 127 is to be construed  
most sparingly and only in appropriate cases in order to  
keep the administrative issues within the bounds of their  
necessity and not for carrying over cases.

Where in a bench consisting of two judges to try a case  
under the *Precedent Ray Jct.* only one judge belonged to  
Village Hingray in which the appellants and respondents  
were resident and the two belonged to other villages.

*Per Dutt J.* Held, that the bench was illegally constituted  
and had no jurisdiction to try the case and that the defect in  
the jurisdiction could not be said to have been waived by the  
appellants.

THE  
 APPPELLANT  
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 FARMER  
 DEAN

With further that the sentence of a merely illegal or  
 appropriate was not an approved party a resulting period of  
 endorsement of the High Court under Art III of the  
 Constitution. The corresponding provision there is  
 except with such order as can be corrected through a writ of  
 certiorari and that the corresponding provision is  
 contained through the issue of one of such writs.

C. J. J. J. J.

Criminal Miscellaneous No. 1874 of 1891.

The facts appear in the judgment.

C. P. Bhargava, for the appellant.

H. N. Seth, for the opposite parties.

MAJOR, C. J. —I have had the benefit of reading the  
 judgment of my brother DEAN. I agree with him that  
 the Panchayat Adalat is not bound by the provisions of  
 the Code of Criminal Procedure, and if for the class  
 offences it did not pass separate sentences, it cannot be  
 said that the sentence is illegal, provided the sentence  
 passed by it is within its competence.

As regards the second contention that the bench was  
 not constituted in accordance with the provisions of  
 section 43(2) of the Panchayat Raj Act, two points were  
 raised before us. Firstly, that the decision was given by as  
 many as seven panches and secondly that there was  
 only one panch from village Haggay to which the  
 complainant and the accused belonged while there  
 should have been two.

As regards the first point, we give the appellant an  
 opportunity to establish that the bench consisted of  
 more than five panches or that more than five panches  
 had taken part in the proceedings or pronounced the  
 judgment. Learned counsel advanced that he had no  
 instructions on the point and was not able to substantiate  
 the same. The officers in support of the allegation  
 has not been properly sworn and cross-examined, he  
 relied upon.



Coming to the second point, sub-section (2) of section 46 of the United Provinces Panchayat Raj Act (No. XXV of 1947) is as follows:

Even such bench shall include one parish who resides in the area of the gown table in which the plaintiff of a suit or proceeding on the complaint of a case resides and likewise one parish residing in the area of the gown table in which the defendant or the accused resides and three parishes residing in the area of the gown table in which neither party resides.

The sub-section clearly provides for a case where the complainant is a resident within the area of one gas substation and the accused is a resident within the area of another gas substation and in such a case one penalty is to be from the area of the gas substation of the complainant, and one from the area of the gas substation of the accused and three penalties were to be from the area of the gas substation in which neither party resides. The legislature does not seem to have made any provision for a case where both the complainant as also the accused come from the same area of the gas substation.

The other point to be borne in mind is that in a cave there may be more than one complaisance and more than one scoundrel who may all be residents of some under different poor abilities—in such a case it will be difficult to appoint a bench of scoundrels with the presence of each section (7) of sections 48.

The third important factor to be borne in mind is that the quantum is of three-parches and none of the three parches taking part in the trial and forming the quantum may be from the area of the space table of the wanted in the *amalgam*.

Under subsection (2) of section 49 it will be possible only in a limited number of cases for the second to

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**  
 6. **References**

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 —*section (f) of section 49*  
 —*in making the constitution*  
 —*but section (4) of section 49 provides that—*

constitute a bench. It was suggested that whatever the umpire finds any such difficulty, he can always refer the matter to the prescribed authority which, in such a case, will not be bound by the provisions of sub-section (f) of section 49 in making the constitution.

but section (4) of section 49 provides that—

Notwithstanding anything contained in this section, the State Government may, by rules put into the constitution of special benches for dealing with any dispute arising between any parties or persons within of different circles or for any other purpose.

Rules 83(c) and (3) are the rules framed in this connection. Rule 84(3) is as follows:

If in a suit, case or proceeding, the umpire, of a Panchayat, Adalat or has some relation, employer and employee or partner in the business of her, it is party or in which any of them may be personally involved as the umpire finds any difficulty to form a bench according to section 49 of the Act the umpire, instead of forming a bench under the said section, shall immediately after the institution of the suit, case or proceeding, in the case may be, submit the papers to the prescribed authority who shall constitute a bench for its trial, under section 49(f) or sub-rule (4) of this rule as the case may be.

This provision does not appear to me to be helpful, as it refers us back to sub-section (f) of section 49 of the Panchayat Raj Act and still bench has to be constituted in accordance with the provisions of that sub-section. Sub-rule (4) of Rule 84 is as follows:

(1) Constitution of a special bench—

For the purpose of trial or decision of any suit, case or proceeding, parties of which are





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Article 107 of the Government of India Act. Such power, their Lordships pointed out, had to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. In this connection I may refer to the judgment of my brother Justices J in *Mahesh v. State* through Justice Sengupta (2) where he pointed out that Articles 226 and 227 must be so interpreted that they do not overlap and that while Article 226 confides to the Court vast powers of what might be called judicial review or control by the issue of writs, decrees or orders the more objectionable of Article 227 would, more broadly, seem to be to secure administrative supervision and only reasonable by writs, decrees or orders over all courts or tribunals (including Army tribunals) vested with jurisdiction. And further he said, Articles 226 and 227 are thus supplementary to each other. The emphasis under Article 227 is on administrative control and the limited judicial powers contemplated by it are intended for and merely ancillary to such administrative control. Thus Articles 226 and 227 are not intended to fit in I can see for identical situations. Though therefore Articles 226 and 227 are not intended, to fit in I can see for identical situations. Though therefore Article 227 can be said to be as has been pointed out by their Lordships of the Supreme Court, not merely administrative supervision, the power of judicial review is conferred by Article 227 must be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

I agree that this application must be dismissed.

Justice J. —I agree and have nothing to add.

Order. J. —This is an application under Article 227 of the Constitution for setting aside conviction of the

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applicant by a panchayat adalat under sections 323, 304 and 306, Indian Penal Code. The applicant was prosecuted by the opposite party before the panchayat adalat for the three offences mentioned above. The panchayat constituted a bench consisting of five panchs to try the case. The applicant was resident of village Haggary and the opposite party also is a resident of the same village. One of the five panchs, only one panch, namely Sri Mewa Lal, belonged to village Haggary and the rest belonged to other villages. The bench passed upon the applicant one sentence of fine to cover all the three offences of which they have been found guilty. They challenged their conviction through an application under section 45 of the Panchayat Raj Act presented before the Sub-divisional Magistrate. It is not known what were the grounds taken by them in their application but the grounds that were pressed really before the learned Sub-divisional Magistrate were (1) that the conviction for the offences of sections 304 and 306 was illegal when they were convicted under section 323 Indian Penal Code, and (2) that if the opposite party had been attacked by all of them with knives they would not have escaped with only bruises. The learned Sub-divisional Magistrate was strong in these grounds and not being satisfied that there had reached any miscarriage of justice dismissed their application. Thereupon they filed the present application. It is stated in the application that it was illegal for the Panchayat Adalat to pass one sentence for all the three offences and that the bench was not constituted in accordance with the provisions of section 45(2) of the Panchayat Raj Act as it included only one panch from village Haggary instead of two. The case came up for hearing before our brother Rajagopal Devai who was of the opinion that Sri

*Mishra v. E.* (1), required recommendation and that the question that arose in the present case arose in *Mur.* 3236 of 1951 which he had referred for decision to a larger Bench, and accordingly he referred this case also to a larger bench.

The  
Honourable  
Judge  
of the  
District  
Court  
Allahabad

The facts in *Shri Nandan v. Emperor* (1) were that five men were prosecuted under sections 367, 382 and 383 read with section 149, Indian Penal Code and were convicted by a magistrate who did not specify the sections under which he convicted them, and passed a sentence of six months imprisonment and a fine of Rs. 50. Our brother Justice Chatterjee held that the convictions and the sentence were illegal because the magistrate ought to have specified the offences of which he convicted the appellants and ought to have given separate sentences for the different offences. He referred to sections 367 and 387 of the Code of Criminal Procedure but the provisions of the Code of Criminal Procedure do not govern proceedings before a panchayat adalat. A panchayat adalat is not at all bound by its provisions and its orders cannot be held to be illegal on the ground of any conflict with them. It might have been illegal under the Code to convict without specifying the sections or to pass one sentence for a number of offences, but it does not follow that it would be illegal for a panchayat adalat also to record a conviction without specifying the offences and to pass one sentence for all of them. Whether it is illegal or not would depend upon the provisions of the Panchayat Raj Act alone. None of its provisions makes it illegal for a panchayat adalat to record conviction without specifying the offences or to inflict one sentence for a number of offences. The power conferred upon





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I now come to the question of the effect of non-compliance with this particular provision of section 19(2). I am of the opinion that the non-compliance causes a jurisdictional defect in the constitution of the bench and that the justices have no jurisdiction to try the case assigned to them. The law seems upon their being seated five justices in every bench and upon those justices coming from panels to upon sitting. If a bench must include a justice belonging to a particular panel sitting but does not include him or includes more justices belonging to a panel sitting then we require under section 19(2) the constitution of the whole bench becomes defective and the justices are devoid of any jurisdiction. If a person has no right at all under the provision to be a member of the bench it means that he has no jurisdiction whatsoever to try the case. In the present instance one of the four justices belonging to panel sitting other than of the panel one was not qualified to be a member of the bench though it may not be known which one. In all four of the justices were qualified to be members and the fifth on account of his disqualification should be treated as not a member. The law requires a bench of not more than and not less than five justices. Hence the bench being of only four members was not legally constituted and had no right to try the case. In other words it had no jurisdiction over the subject matter of the case. I now mention here that the provision that a bench may include five justices is not inconsistent with the law contained in section 19A to the effect that if on any date a justice is absent on account of illness or the remaining members may go on with the case provided that at least three of them including the chairman are present. One deals with the constitution of a bench and the other with presence of its members during the trial of a case. What the two provisions considered

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together means is that a bench must consist of five panchees, that it is not essential for all of them to be present on every date of hearing and that if at least three panchees including the chairman, are present they can try the case. The fact that three panchees are allowed to try the case does not mean that there is no panachee quoral defect if a bench is constituted with only four or even three panchees, or with five panchees, one or more of whom possess no residential qualification to be members, of it.

The analogy of a High Court, having a number of Judges, any number of whom can form a bench to try any case, does not apply to a *panchayat* *adalat*. All Judges of a High Court are equally qualified to try any case, but all *panches* of a *panchayat* *adalat* are not equally qualified to try any case. The creation of a bench of any Judges of a High Court to try any case is not in contravention of any statutory or constitutional provision; on the other hand, the creation of a bench of five *panches* to try a case may contravene the provisions of section 49. The Commission vests the power in the High Court and not as it devolves but the Panchayat Raj Act does not vest the power in the *panchayat* *adalat* and vests it only in a particular Department; in bench of it. An officer is enabled by a *panchayat* *adalat* but can be all or any of its *panches*. It is enabled only by particular five *panches* possessing certain qualifications and selected by the *sempach* in a particular order. A list is prepared of all the *panches* a *panchayat* *adalat* in alphabetical order and the *sempach* has to select five *panches* possessing the necessary required qualifications namely, none by name from it, see Rule 84(2) of the Rules framed by Government under the Act. Only the *panches* selected by the *sempach* can try a case, no other *panch* can try it.

If a court is not constituted in accordance with the law it has no jurisdiction to act as such. In *Queen Empress v. George Rose* (1) a Full Bench of the Court was called upon to decide whether a Judge of the Court was appointed in accordance with the law and was competent to hear a case. It held that he was legally appointed but observed, though by way of obiter, on page 136, that if he were not legally appointed all his judgments, decrees and orders in civil and in criminal cases would have been ultra vires and illegal. In the *Colonial Bank of Australasia v. Wilson* (2) the Judicial Committee explained what is meant by "want of jurisdiction". It pointed out that there must be certain conditions upon which the rights of every tribunal of limited jurisdiction to exercise their jurisdiction depends and that they may be founded, either on the character and constitution of the tribunal or upon the nature of the subject matter of the enquiry. This suggests the view that illegal constitution of a tribunal is a jurisdictional defect. It is stated by Cresswell in his *Interpretation of Statutes* (1952) page 244 that "when a statute confers jurisdiction upon a tribunal of limited authority (in and statutory origin) the conditions and qualifications annexed to the grant must be strictly complied with". A Judge, who is prohibited from issuing by the plain direction of the law, cannot sit and the agreement that he shall so give no jurisdiction. per PACEWELL, J., in *McGaughey v. Denning* (3). If the quorum for a bench of Magistrates is fixed at three and only two Magistrates are present the bench is not legally constituted. see *Queen Empress v. Mathur* (4). The reason is as stated in *Pratt v. South Insurance Corporation v. Commissioner of Revenue* (5) that a court consists of all the Judges appointed to it. A rule made under the Bar Council's Act 1926 required that all the

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(1) (1884) 12 B. & S. 401. (2) (1884) 12 B. & S. 401. (3) (1884) 12 B. & S. 401. (4) (1884) 12 B. & S. 401. (5) (1884) 12 B. & S. 401.



mean. *The State of Rhode Island v. The Common Council of Alcock* (1), *Temple v. Hager* (2), *Boaden v. Peck's Exchange* (3), *Moxon, J., dismissed a writ of error v. Lister and Nicholas Baskin, Co.* (4) is the right to put the whole of justice in motion and so proceed to the final determination of a cause upon the pleadings and evidence. According to *Cooper-John Bernadine*, Vol. 52, *General Law*, a paragraph 117, jurisdiction as applied to criminal law means the power to cognize and take facts to apply the law and to declare the punishment for an offence in a regular course of judicial proceeding or the right of administering justice through laws by the terms which the law has provided, for that purpose. Therefore if a bench of a jurisdiction acted in violation of its jurisdiction with the law and there fore cannot try the case in any which it is constituted it is devoid of jurisdiction over it whether the defect in the constitution arises out of facts being not exactly the parties or out of there being five parties, one or more of whom are not qualified to sit on the bench.

It is elementary that there can be no waiver of want of jurisdiction. If the jurisdiction of a court is a grant of authority to it by a legislature, it is beyond the scope of judges to render it. Territorial jurisdiction stands on a different footing though defined by a legislation it relates to the convenience of judges and is such as subject to their disposition. A personal privilege respecting the venue or place of a suit may be waived as law by failure to raise it seasonably. see *Norfolk Co. v. British Ship Building Corporation* (5) and *Industrial Adhesive Association v. Commissioner of Internal Revenue* (6). In criminal matters parties cannot waive what the law directs. see *Paul Galt, How & Co. Ltd. v. Corby* (7). It is stated by Maxwell at page 592 that

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(5) 1888, 1889, 1889, 1889, 1889

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In criminal matters, a person cannot waive what the law requires and that "any statutory obligation which goes to the jurisdiction does not admit of waiver" and in 201 that "When public policy requires the observance of the process, a waiver cannot be made by an individual. *Procurator generalis jure publico non derogat*." It was pointed out in *Parson v. U. S.* (1), that one of the circumstances that gave rise to the ancient doctrine that an accused cannot waive anything was that he was not furnished counsel. Under the *Pendleton Ray Act* also an accused is not allowed the assistance of counsel, therefore it would not be proper to hold that he waives a defect in jurisdiction on account of his failure to object to it at its trial. An essential requisite of the doctrine of waiver is that the party knows of the irregularity. If he does not know of it, he cannot be said to waive it. Waiver is always a question of fact, and there can be no waiver without knowledge as observed in *Parson v. Langdon* (2). Though ignorance of law is no excuse, an accused is at least not bound to know that the bench constituted by the Surrogate to try him is not constituted in accordance with the provisions of section 42 of the *Pendleton Ray Act*, and if an accused or his attorney does not object to the Bench trying him, it cannot be said that he waives the defect. A Full Bench of the Prince Edward County Superior Court observed in *Parson v. Parson* (3) that if a court has jurisdiction in respect of the person, the place and the character of the case, it may exercise jurisdiction, even if by reason of any irregularity imposed by statute a court is without jurisdiction to entertain any particular action, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court and that a different question arises when it is suggested that a court is the exercise of the jurisdiction.

which it prescribes, has not acted according to the mode prescribed in the statute. If such a question is raised, it relates obviously not to the substance of jurisdiction, but to the exercise of it as an irregular or illegal mode, not and the statute continues to be applied equally. Mansell seems on page 358 that

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General  
v. The  
Governor  
of the  
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1849, 2

The regulations concerning the procedure, and practice of trial courts may in the same way be varied by those for whose protection they were intended.

Matters upon which the jurisdiction of the court depends, must they do not take so narrow of procedure which are enacted for the benefit of the individual, can not be varied. see Crawford on Statutory Interpretation, para. 272. W. Howard writing in *Festschrift* of the Law of England Vol. 14 under article

Water says that a statutory provision which is introduced for general public purposes and not for the benefit of a particular person only, cannot be varied. The provision in section 4(1) that a bench must include one person who resides in the area of the given subba in which the complainant resides and one person residing in the area of the given subba in which the accused resides cannot be said to have been enacted for the purpose of any individual. If a bench include, only one person residing in the area of the given subba in which both the parties reside it cannot be said that the provision that is infringed is one enacted for the benefit of any particular party only and that he can waive the irregularity. The two benches have to be of one given subba but not of opposite locations in the village and it cannot be said that the legislature contemplated that where there are two benches residing in the common given subba one would vote with or vote for the complainant or look that his interests and the other would

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side with or look after the interests of the accused. There is no assumption that the two benches would take opposite sides of the case and balance each other. The law requires two benches from the common pool, with one with any such intention. They are to sit to be on one side or to be on opposite sides. Even if a bench include only one judge from the given side, and he has given his opinion in favour of the accused, the second can plead that the bench was illegally constituted because there was no second judge from the opposite pool side. He can raise this objection even if he - all one knows - the second judge from the common pool side, might have given his opinion against him. Section 44 was enacted with a view to reduce the discretion of the Bench in the matter of constituting a bench as much as possible. It was only a law provision that there should not be a preponderance of judges leaning to a particular side in which one of the parties could otherwise have a danger of prejudicial bias substantiated to local population.

Coming to the case decided under the Panchayat Raj Act, I find some confusion in them. One of the earlier cases decided is *Jane Ram v. Panchayat Adalat, Gulbarga* (1). In that case an order was passed by only three judges and was on first very ground, held to be "with-out jurisdiction" by our brothers Sanyal and Mathur. There was no defect in the constitution of the bench, it had five judges, preponderance of the required qualified ones. Three of them joined the order in concurrence with a rule framed by the State Government. The rule was held by our brothers to be ultra vires. The bench had jurisdiction and rightly proceeded to exercise it even the case, it was only in the course of the exercise of the jurisdiction that it committed the illegality. It



is not known if any objection was raised to the order being passed by only three of the panelists, probably it was not. Still our brother, held that the order was void for want of jurisdiction. A case in which the bench itself was not constituted in accordance with the law stands on a higher footing. *Rein Fraser's* (1) Son, (1) followed the decision in *Rein Fraser's* case. In *More* (1) George Chasen (1) our brothers Bernie and Arnie were had to deal with a case in which the bench did not include a panelist, resulting in the case of the grand jury in which the accused resided. The defect was held to affect the jurisdiction of the bench and its order was quashed on that ground. I notice that it was quashed in spite of the fact that the accused did not object to the constitution of the bench, while the case was pending before the panelists' advice. They took the objection for the first time and this too was in very clear terms in their application to the Sub-divisional Magistrate under section 85 of the Panchayat Raj Act. If they could have waived the illegality on the constitution of the bench they could have done so only by not objecting to the illegality while the case was pending before the panelists' advice. Whatever they did not subsequently could not possibly affect the question of waiver. If they waived the illegality and could waive it, they could not have succeeded in the court of the Sub-divisional Magistrate at all. Under section 48(2) no panel can take part in any case to which he or she was not related in a party or in which he was be personally interested. In *More Lal's* (1) Son (1) that provision was challenged and a panel who was personally interested in the case took part in trying it. Our brothers Bernie and Arnie were set aside the order of the panelists' advice on that ground. Under Rule 84 of the Panchayat Act

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applies in all circumstances. It is not unusual to arrange for both the parties to come from the area of one given village, as is normal of fact in a situation of emergency would come from the area of one given village. Our benches did not consider here a situation like this, or with the requirement that a bench must have three members, some of whom reside in the area of the given village in which either party resides or a bench must have a bench residing in the area of the given village in which the parties reside—in an earlier case *Kishorendra v. State* (1) our benches (my brother, Mr. Mohan Lal, had held that a bench which does not include as a member residing in the area of the common given village is improperly constituted, that decision is not referred to by *Asa v. State*.) In *Mohar Singh v. State* (2) it seems to have been accepted that the provision under consideration does require that a bench must include two members residing in the area of the given village in which both the parties reside, but an obliquement of it was held not to go to the root of the perfection of the bench. In my opinion, that decision requires no consideration as more of what I have said above. If cases are made out one complainant residing in the area of more than one given village or more than one accused residing in the area of more than one given village, all that the provision requires is that there must be one member from each of the areas. The provision does not require that there must be members residing in the area of all given villages in which every complainant and every accused resides. Cases may arise in which the requirement that the remaining three members must come from areas of the given village in which neither party resides cannot be fulfilled, it may happen that there are several complainants or several accused and there is no given village in the area of which one complainant or one accused does not reside. The legislature, however, has

(1) 1978 (1) C. P. J. 207.

(2) 1980 (1) C. P. J. 271.

provided for such a contingency by authorising the State Government to prescribe rules for the constitution of special benches. Accordingly the State Government have made rule 84(3) to the effect that if a surveyor feels any difficulty in forming a bench according to the provisions of section 49 he should submit the paper to the prescribed authority who will constitute a special bench. The prescribed authority is empowered under rule 84(4) to constitute a bench either in accordance with the provisions of section 48(2) or in accordance with the provisions of rule 84(4). There are two different sets of circumstances in which a surveyor may find it difficult to form a bench and is empowered to refer the matter to the prescribed authority—(1) when he is "of his opinions" etc. is a party and he feels embarrassed in forming a bench in such a case a bench can be formed in accordance with the provisions of section 48(2) and the prescribed authority, when forming a bench according to them. The other set of circumstances is that the surveyor cannot form a bench in accordance with the provisions of section 48(2) and in such a case the prescribed authority is required to form a special bench under rule 84 (4). When forming a special bench he is not guided by the provisions of section 48(2) at all. This is evident from the fact that the matter is referred to him just because it is not possible to comply with those provisions. I may also refer to rule 84(5) which allows a party to a case who is "dissatisfied with the personnel of a bench constituted for its hearing to make an application to the surveyor stating the grounds of his dissatisfaction and requesting for the reconstitution of the bench" and empowers the surveyor to constitute a fresh bench. If the party concerned proves to the satisfaction of the surveyor that the inclusion of a particular judge or judges in the bench would be prejudicial to the trial. Under these provisions a party can object to the constitution of a

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bench only when he is dissatisfied with its personnel and apparatus consisting of jurists. This is not permitted to object solely on the ground that the constitution is against the provisions of section 46(2). If a bench is constituted in contravention of those provisions it cannot be said that either party would be dissatisfied with the personnel on first the concept, since with the jurists would be prepared to live with it. Even if the bench is not constituted in accord with those provisions it may do full justice in the case and its personnel may satisfy both the parties. Because it satisfies both the parties its constitution is not vitiated and it cannot become jurisdiction void the case. There is no provision in the Act or in the Rules giving a party a right to object to the constitution of a bench only on the ground that it is against the provisions of section 46(2). Therefore if a party fails to object to the constitution reasonably it cannot be said to have failed to have recourse to a remedy permitted by the law and thereby to have been deprived from objecting to it in a subsequent proceeding.

In the result I find that the bench which tried the appellants was legally constituted and had no jurisdiction to try them and that the defect in the jurisdiction could not be said to have been waived by the appellants. The order of the judge who corrected them was void for want of jurisdiction and declared to be set aside.

A *panchayat shiksha* is a court subordinate to a High Court and amenable to its powers of superintendence. These powers include power to interfere with a judicial order though only on the ground that it is in excess of jurisdiction or passed without jurisdiction or involves refusal to exercise jurisdiction which was an subordinate court. Prior to the enforcement of the Constitution, the High Court had no power to review

cases of certiorari, mandamus, and prohibition. There can therefore no occasion then for considering whether the power of superintendence should be exercised through such writs or might be exercised in some other manner. Now the Court has the power to issue such writs and the question arises whether the power of superintendence should be exercised through the issue of such writs or by passing a simple order, cancelling or varying the order passed by the subordinate court or tribunal. The Queen's Bench of England exercises its superintending jurisdiction over subordinate courts and tribunals through the issue of the writs of certiorari, mandamus and prohibition (see *Shaw-Nathan v. Lord Aldrich* (1), *Reynolds v. Gresham* (2), *Remond v. Remond* (3), *Reynolds v. Gresham* (4), *The Law of Precedence: Legal Remedies for Errors* 1905 page 223; *Shaw and Walker's Practice of the Queen's Bench* 1890 page 19; *Practice of the Queen's Bench* 1901 page 19; *Practice of the Queen's Bench* 1901 page 19). Therefore the power of superintendence conferred upon all High Courts by Article 227 of the Constitution should be exercised through one of the writs of certiorari, mandamus, and prohibition or by some other power. If the remedy of certiorari, etc. is not open to a person aggrieved by an order of inferior court or tribunal it would mean that a High Court has no power to interfere with it. Article 227 does not confer any other power upon it and it cannot interfere with the order even though no certiorari, mandamus or prohibition can be granted. In *Shaw-Nathan v. Lord Aldrich* (1) the Supreme Court held that Article 227 confers not only administrative but also judicial superintendence over subordinate courts and tribunals. In this case the Judicial Commissioner of Her Majesty's Prerogative on an application under Article 226 and 227

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By the Clerk—The application is dismissed.  
Having regard to the facts of the case, no order as to costs please the court.

*Application dismissed.*

This  
application  
is  
dismissed,  
without  
costs, save the  
costs of  
this case.

### FULL BENCH (CIVIL DIVISION)

*Before the Honourable B. Mahd. Chief Justice, Mr.  
Justice Srinivas, Mr. Justice Srinivas, Mr. Justice  
Srinivas, and Mr. Justice Chinnappa.*

KALAPATHI MOOLAI and others (Plaintiffs)

v

*1944  
October 12*

MIYAMA KAND and others (Defendants)

*Code of Civil Procedure, 1908, s. 133—Order XXIII r. 1 and 2. Order XXIII r. 1—Application for permission to sue as pauper rejected—Order in which court for time to pay civil fine made before—Application for permission to sue as pauper rejected.*

In an application for permission to sue as a pauper of India, relying on the order directing the pauper to pay as per a certificate in application and as written has been made, in the court paying due time for payment of arrears, he granted it is the duty of the court to give a suitable order in that application before rejecting the application for permission to sue as a pauper. In a court case the court has granted under a Civil Procedure Code and grant time after it has been made of the case and the document is no longer before.

A court has jurisdiction to reject or not to sue as pauper in present order rejecting the application and by not giving a suitable order dealing with the pauper contained in the application for time.

*Order granted.*

Chief Justice B. Mahd. of 1944, from an order of C. B. L. Murali Chidambaram Judge of Bangalore dated the 18th November 1944.

that  
 the facts  
 stated in  
 the  
 judgment  
 were

The facts appear in the judgment

A. L. Hiron, S. N. Singh and A. R. Khan for the applicants.

Anil Kumar Prasad, Jasjit Prasad, A. N. Prasad, Rajpal Singh Prasad and M. S. Bhargava for the opposite parties.

The judgment of the Court was delivered by—

MATH, C J. —This case was referred to a Bench of five Judges by our brother, SACHIN DAS GUPTA, and GUPTA who was of the opinion that the demand of the Full Bench in *Chandra Moh's Bhagwati Ashok* (1) needed reconsideration. In that case the point referred to the Full Bench for decision was as follows:

Whether after rejecting the application for leave to sue as a proper one the court is to require and subsequent order allow the applicant to pay the requisite court fee under section 149 Civil Procedure Code and then the application can be filed?

The facts given in that judgment are that the application for leave to sue as *forma pauperis* was rejected on 29th September, 1954. On 1st October, 1954, an application was made for review on the ground of the coming of some new material to prove that the applicant was a pauper. That application was rejected, but at the time of rejecting the application, leave was granted to pay the court fee. *AGGARWAL, C J*, *THAKUR* and *AGGARWAL, JJ.*, all agreed that after the application for leave to sue as *forma pauperis* had been filed, the point of it was not possible for the court to permit under section 149, as there was no document before the court to which section 149 of the Code could apply. The learned Judge also considered the question whether at the time of rejecting the proper application

the case could go on now to put the question. [SPEAKER: E.] and [SPEAKER: J.] were of the opinion that upon which concerning the proper application the case could not be the only under point time to put the question. Mr. Justice [SPEAKER: J.] delivered the vote.

The second point on which the learned judge had ruled was again referred to a Full Bench and it came up before a Bench of which some of us were members, *Georgia v. State v. Mahan*, *Anthony v. State* (3). There was motion also under Order 24 in which there was a difference of opinion between one of us and [SPEAKER: J.] was of the opinion that in the death of the person no right existed and the application for time to use in *forma pauperis* could not be continued by the legal representatives of the deceased. The other view was that if the legal representatives were themselves paupers they could claim as their own right to continue the application to use in *forma pauperis* and in case it was held that they were paupers, and that the application filed by their petitioners was a bona fide application the case would be deemed to have been filed when the original petition was presented in court. The case was again referred to a Full Bench which held that on the death of the person his legal representatives could pay the court fees and continue the suit or if they were themselves paupers they could apply to continue the proceedings in their payment of court fees and in that connection discussed the merits of an application for time to use in *forma pauperis* and agreed with the view expressed by [SPEAKER: J.] in *Cheney v. State* and *the Commonwealth v. the Commonwealth* (3).

There can be no doubt that an order under section 144 of the Code can only be passed when there is a

At 10:00, Session on 10th of 1901. At 10:00, Session on 10th of 1901.  
 Held at 10:00, Session on 10th of 1901. Held at 10:00, Session on 10th of 1901.

1901  
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 State v. State

1964. document still before the court, and since the court has  
 1964. been aware of the case, and there is no document before  
 1964. it, it cannot grant time to give the court further notice, that  
 1964. certain.

1964. Learned counsel for the opposing parties has argued  
 1964. that on the 11th of November 1963, at the time when  
 1964. the court was passing the order on the papers applica-  
 1964. tion, an oral request was made to the court to grant  
 1964. time and the court asked the applicants to make a  
 1964. written application, and the order of the 19th of Novem-  
 1964. ber was therefore passed on an oral prayer made on  
 1964. the 11th of November, while the court was still seized  
 1964. of the case. But the application of the 11th of Novem-  
 1964. ber, does not bear out that contention. On the other  
 1964. hand, from the application it appears that it was filed  
 1964. not before the court but probably before the Vice  
 1964. clerk. No mention is made in the Order, which of the  
 1964. 11th of November that such an application was filed by  
 1964. the plaintiffs on that day. The stamp was not punched  
 1964. or recorded in the court register, as would have been  
 1964. done if it was filed in court; has not been punched and re-  
 1964. corded in the Minutes of the court and the applica-  
 1964. tion was put up before the court for the first time on  
 1964. the 11th of November, when the court passed the follow-  
 1964. ing orders:

Time for payment of costs for is given till  
 11th December

The application on which this order was passed reads  
 as follows:

(1) That the court has been pleased to discharge  
 the applicant's application for permission to sue in  
 proper

(2) That under the circumstances it is necessary  
 that the court be pleased to allow at least two  
 months' time to deposit the requisite sum for

other party plaintiff's case was resolved pursuant to legislation.

It is therefore, prayed that the case be placed on after at least one month, time to deposit the court fee.

FILED  
CLERK OF DISTRICT COURT  
BY  
JAMES W. HARRIS  
CLERK

No motion is made in the application that an adjournment be made. Almost a year afterwards when the learned Judge who had passed the order of the 18th of November had been transferred and the defendants had saved a plea of limitation in application along with an affidavit was filed that a request was made before the proper application had been reported, has the court asked the petitioner to make a proper application. The application and the affidavit show that by this time the plaintiffs were fully aware of the difficulties that they had to face on account of the decision in *Cheney McPhee* case and an attempt was made to be as possible to bring it in line with that decision. We are not satisfied that any request was made in the court on the 18th of November before the proper application was finally disposed of to grant time.

After the order for case law series of the case and the document is no longer before in the court, cannot enforce production under section 149 of the Code and strict time. We therefore hold that the lower court after having finally disposed of the proper application on the 18th of November, 1965, had no production on the 18th of November, 1965 to grant time to pay execution under section 149 of the Civil Procedure Code.

It often happens that proper applications, which are covered under case law series, can be put off without delay and during this period sometimes times for filing the case on payment of court fees expires. If a proper application is made to set on foot

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## FULL BENCH APPELLATE CIVIL

*Before the Honorable B. Muthu, Chief Justice,  
Mr. Justice Srinivas and Mr. Justice Rangaraj*

**KOBAN SINGH JANGPANGI and others**  
(Plaintiffs)

v

**TIREKURA SARADUR PAL (Defendant)**

**Kannan Land Tenure-Police and Land Revenue**

**1954  
December 2**

*Katcha* (Shudra) village of considerable size a police  
Shudra village

*Varra Bangaru* (poor Shudra) is not a police Shudra  
village

A police Shudra village may on some of time become a  
Katcha Shudra village by reason of the police Shudra being  
that police Shudra village a Katcha Shudra may on some  
become a police Shudra one may a Katcha Shudra village  
be converted into a police Shudra village

Second Appeal No 2294 of 1947 (from a decree of  
R. F. S. Swini District Judge of Kannan dated the  
11th August 1947)

The facts appear in the judgment.

R. C. Ghosh, for the appellants

L. M. Post, for the respondents

The judgment of the Court was delivered by—

**MAJ. C. J.** —This is a plaintiff's appeal against a  
decree passed by the learned Additional Civil Judge  
of Alameda dismissing the plaintiff's suit for a declara-  
tion that *Varra Bangaru*, *Pann Mulla Aloor*, is a  
police Shudra village of the plaintiffs and that they  
have been wrongly recorded as *Katcha Shudra* in  
the revenue papers during the settlement of 1910-11  
by the records of the Settlement Officer.

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The fact, so far as there could be ascertained from the papers on the record, was that there was a village here which was the Andaman Islands, was the village of this village and there was a name Thola, Sangpata, Bora Bora and (Mora) Baga. All the parts had been given by the British Government to the Republic of Andor in their territory.

On 1st April, 1953, the Republic of Andor entered a Treaty with the Government of the United Kingdom, the terms of the Treaty, to determine the disputed land in Bora, was on the following terms:

As you wish within our scope, and to require bringing under cultivation the water land along the bank of Gora Ganga, you should, first, bring under cultivation the area (irrigated) land of Bora, pira. You should pay, the (irrigated) land (irrigated) dues according to the rates prescribed in the recent settlement and remain those in the capacity of a (irrigated) land. Without making any objection, you should supply to the Government of Andor whether good or bad or not, make (irrigated) etc. You should bring (irrigated) from (irrigated) (irrigated) and cultivate that land (irrigated) Sangpata, Bora Bora and (Mora) Baga. You should not manage the cultivation of our (irrigated). Besides that, you should extend the cultivation from the upper side to the lower side. You shall cultivate the land (irrigated) by us. You shall (irrigated) by the (irrigated) land (irrigated) there. If you go in any way against the above-mentioned conditions and (irrigated) (irrigated) in any way (irrigated) you shall be (irrigated) without making any objection from the above-mentioned land (irrigated) Andor.

In the Treaty of 1953, during British Settlement, Thola Sangpata was recorded as (irrigated) but





His  
 Honour Justice  
 Lushington  
 in  
*Barrow's  
 Application  
 for  
 Title* 4-2

(4) that there is no evidence or proof that the plaintiffs are in possession of anything more than the strips of area which was given to them under the *Tanfikhanas* of 1865

(5) that under the *Tanfikhanas* of 1865 the rights given to Sikhs were tenure rights and not proprietary rights, and

(6) that there is no evidence on the record to prove whether there is any common land or an unenclosed land in *Thak Baggan*, and if so in what it belongs.

The rights that the plaintiffs can, therefore, claim are measurable to the documents of 1865 and as that documents merely tenancy rights the plaintiffs cannot claim that they have got anything more than the right to cultivate the assigned land which was given to them in 1865.

Learned counsel for the appellants, Sri Ghosh, has urged that if a *khaddar*, which word means in Sanskrit and Gurmukhi a co-sharer in the husbandry rights, has no *khidmat* land in the village and the entire cultivated area is in the possession of the *khaddars*, they must be held to be *public khaddars*.

On the other side it is urged by Sri Puri that *public khaddars* means he created by a grant or by a *khaddar* giving to the grantee the right to cultivate exclusively the assigned land in a village. Learned counsel has urged that public *khaddars* is a term used in Sanskrit and Gurmukhi in a special sense and means the body of persons who brought waste land under cultivation by cutting down the forests and reclaiming the land for their own benefit and thus became in a sense the proprietors of the land which was more or less unenclosed property and was later disposed of these proprietors' rights by the British Rulers or by the British Government upon any

their claims and settling the land with others who broke the enclosures and the actual occupants of the village were reduced to the position of a sort of under-proprietors. For all intents and purposes they were the owners of the village including the common land and the wasteland, their only liability being to pay the land revenue and a certain percentage to makekua dues to the *haunder*. The liability of the entire body was joint and several and, on the death of one without any legal heir, his land reverted to the other *Pukia* *Khander* of the village and did not revert to the *haunder*. The main difference therefore as is claimed is that while a *Kerika* *Khander* is a *senior*, a *pukia* *Khander* is in a sense a *proprietor*.

THE  
HAWAIIAN  
RECORD  
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NO. 2, J

Learned counsel for the appellants has relied on the observations in Sawell's Manual of Land Tenures of the Hawaiian Division 1914 Edition page 82, where dealing with the main classes of *khander* the learned author has said

first class of *Khander*, therefore, consists of the old occupant communities in villages where the *haunder* hold no *Khuakaka* land. All villages held entirely by *khander* belong to this class since no instance is on record of an entire village of *khander* having any other origin.

It is urged by learned counsel that Sawell's book on the absence of anything to the contrary, is considered to be authoritative and, if the village is held entirely by *khander*, it must be deemed to be a *pukia* *khander* village. There is but one observation of Mr. Sawell that no instance is on record of an entire village of *khander* having any other origin.

On the other hand, learned counsel for the respondents has referred us to a decree of Board of

THE  
CHINA  
LAW  
REVIEW  
VOLUME  
17  
NUMBER  
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**Revenue in Manchuria: *Songli v. Dianshi*.** (1) Where, though the estate concerned was not a possession of the Manchus, it was held that it did not follow the same law but it was a public Manchu village and the decision of the Commission in the *Serdanov* preceded that of 1941 was not valid.

During with the same class of Manchus, however, has divided them into two main groups: Public Manchus and private Manchus. About public Manchus he writes that they are those Manchus, who occupy original cultivating properties of the land and who were deprived of their independent right to grants in recognition of the proprietary right under Soviet rule as were the land in later collected in the areas of Manchuria by occupying Manchus, whether as public or the early days of Soviet rule. At page 94 of the book dealing with the Manchurian land the learned author has said:

They (public Manchus) have right over common land upon which in their village is the same system as the *hundred* have in Manchurian village.

The *hundred* has no right to cultivate common land in the village.

According to Scottell, therefore, a public Manchu is a sort of proprietor and his right is in reality an under proprietary right.

The law in the Kwantung and Gorkhail in a long time has all sorts, administered through executive officers and wherever in a public Manchurian village a *hundred* had managed to get a freehold by acquiring some Manchurian land, they held that the village had lost its public Manchurian status and had become a *hundred* Manchurian. During with the Scottell has said:

But of this class of Manchus (i.e. public Manchus) the only ones that have succeeded in getting an



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of the plaintiffs it cannot be assumed that they were the original cultivating proprietors of the land who were deprived of their proprietary rights by reason of the grant of the pottanah to the Rajprithi of Adhai. The origin of the possession of the plaintiffs and their predecessor is known. It was in the year 1885 that Dhanu was given the right to cultivate the irrigated land in the village which was a *madhai* *waran*. His right was conferred on Dhanu in the unclassified land in the village and it cannot be said that he was given any under proprietary right under the Traditions of 1885.

Learned counsel for the appellants have placed great reliance on a decision of Mr. Justice Commissioner, in *Chief Revenue Officer v. Dhanu* (1). Mr. Justice in his judgment has dealt with the origin of public *Madhai* and says

there are only two ways in which these public *Madhai* villages have originated one is the cost of grain made over the heads of the original cultivators in which case the public *Madhai* corresponds almost exactly to the under-proprietor of Gadh.

The second case seems to me to be illustrated in the village now in suit. I take it that in the old days the position was much like the position in the Tana and Bhakar Kaner in the present morning. Government looked for the most solvent and intelligent man in the neighbourhood, settled certain villages with him and encouraged him to acquire tenants. The landlord, thus created, probably had several villages and already had his home in a settled village. He found tenants for the other villages and arranged with them or it was arranged for him by Government that they should pay him certain dues and cultivate and manage the villages.

(1) *Chief Revenue Officer v. Dhanu* by Justice p. 104.

It was not, however, the landlord who tilted his money or expended his labour on reclaiming waste land but it was the body of tenants.

also  
 under the  
 provisions  
 of  
 the  
 Land  
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 Act  
 of 1880

There is however nothing to support the view of Mr. Justice. According to Mr. Justice if there was an absolute landlord who had no cultivators living in the village and he had spent no money or labour in reclaiming the land, clearing the forest and rehabilitating the village and had left it all to be done by tenants then such persons would become public shikars, but, as we have already said, there does not seem to be any authority for the proposition that such persons who were brought on to the land as tenants became so proprietors of that is what constitutes a public shikar. In the glossary of terms used in the L.R. at page VIII of the Manual, shikars are divided into two classes

(1) An under-proprietor whose rights as the original occupant or cultivator have been usurped by, or given to some other person at some former period. This is the public shikar.

(2) An occupancy tenant (who or whose predecessor never had any higher right). This is the hereditary shikar.

Though a public shikar village may in course of time, become a hereditary shikar village by reason of the public shikar losing their public shikar rights a hereditary shikar can in no case become a public shikar nor can a hereditary shikar village be converted into a public shikar village. How other shikar rights or other than public shikar rights can be acquired is dealt with on page 64 of Stewart's book the fourth clause of which is as follows.

As evidence a tenant as well as other person may be recorded as a shikar at the request of the Proprietor usually under some previous agreement





pleased, have failed to prove that they were jalka hunters, and that Thol, Bruggen is a police station village. The case was rightly dismissed by the lower court, and the appeal must fail and is dismissed with costs.

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**FULL BATCH (CIVIL MISCELLANEOUS)**

Before the Honorable B. Hall, Chief Justice,  
Mr. Justice Andrews and Mr. Justice Shenson

LACHTENAU, the original (German name)



5014300 *eng. abstracts. 2000-2001. 2 vols.*

[illegible]

That it is possible on the Portuguese flag, but not on the flag of the Republic of China, to place a star in place of a star already approved and to whose replacement no objection had been made, is correct.

Genet. Microbiol. 1963, 19: 339-352, 1963

The facts appear in the following

Stress: A reward for the workman

Aggravated assault, for the purposes of this

The performance of the Course was determined by

Wann, C. J. —This case was referred to a Full Bench by a learned Single Judge as, in his view, an important question of law arose for decision which was likely to arise in other cases.

A complaint was filed by one Seneca against Roy Fitzer and his two sons, Lockhart and Marvin, under

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certain systems of the Indian Penal Code. The Sa-panch consisted a Bench of five panchas whose names were Panchotan Das, Charnota Bhagwanth Prasad, Mhari Lal, Runkar Prasad and Ram Lalhan. During the course of the proceedings it appears that two of the panchas Runkar Prasad and Ram Lalhan were replaced by two new panchas Bhagwanth and Ram Adhar Singh. As regards Bhagwanth there is a paper on the file paper No. 11 from which it appears that a report was made by Panchotan Das, Charnota and Mhari Lal that Runkar Prasad was not in Baranasi and the therefore some difficulty was felt in getting the quantum. On this report the Sa-panch passed an order that the only other panch available from the Gaon Sabha of one of the parties was Bhagwanth and therefore he was being appointed. It was said by the learned counsel on the Bar that Ram Lalhan had fallen ill and he was replaced by Ram Adhar Singh. The fact that Ram Lalhan was replaced by Ram Adhar Singh is mentioned in the supplementary affidavits and it is not denied in the counter-affidavit filed on behalf of the complainant but as what circumstances and on what date is not clear from the file.

On the 3rd August 1922 the three panchas originally appointed that is Panchotan Das, Bhagwanth Prasad and Mhari Lal and the two new panchas, Bhagwanth and Ram Adhar Singh delivered a judgment in the case. Bhagwanth gave a dissenting judgment and the other four decided in favour of the complainant and ordered the accused and sentenced them to pay certain amounts as fine. There was a revision filed against this order in the court of the Sub-Divisional Magistrate, in Chas, Baranasi, but the learned Magistrate dismissed the revision on the 28th of November, 1922.

The only two points dealt with by him were, firstly, whether the charge was read out to the accused and

if not whether any prejudice had been caused to the accused and secondly whether the Chairman was present at all the dates of hearing. The Magistrate held that the charge had been read out to the accused and that there was no substantial evidence that the Sarpanch had not attended on all the dates of hearing.

The two points raised before the learned Magistrate were not taken before us. The point raised on the Court is that once the panchayat have been constituted by the Sarpanch, he cannot replace them by new panchayat.

Section 49 of the U. P. Panchayat Raj Act (Act No. XXVI of 1947) provides that after a case, suit or proceeding has been instituted the sarpanch has to form a bench consisting of five panchas in accordance with the provisions of this section. The sarpanch in this case had constituted a bench of five panchas in accordance with the provisions of section 49. Section 77A provides that, if any panch appointed to a bench constituted under section 49 for the trial of a case suit or proceeding is absent on any hearing, the remaining panchas may notwithstanding anything contained in that Act try the case suit or proceeding provided however that at least three panchas including the chairman, are present and provided further that at least one of the panchas present is this is record evidence and proceedings. The mere absence therefore of a panch does not affect the proceedings and it is possible for three panchas to continue the trial provided the Chairman and a panch who is learned enough to record the proceedings are available. Rule 84 B framed under section 130 of the Act, provides that where there is a disagreement among the panchas constituting a bench and by reason thereof it is not possible for them to give a decision by the opinion of the majority, the sarpanch may constitute another bench, but no panch, who was a member of the former bench can be appointed to

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(a) cancel the jurisdiction of the Presbytery (the Adalat) at any stage; or

(b) quash any decree or order passed by the Presbyterial Adalat at any stage.

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The system empowers the Sub-Divisional Magistrate to quash any decree or order of the court of justice or to cancel the jurisdiction of the Presbyterial Adalat when he apprehends a miscarriage of justice. The case will then have to be tried in the ordinary court of law. It has been pointed out that in a case where any three out of the five justices are not available on account of death, sickness, or any other reason, it will not be possible for the remaining two to form a quorum. No doubt, such a situation can rarely arise but there should be a provision for the reconstruction of a bench. One can say that in such a case there is in fact no bench and the original position is restored and the magistrate can constitute a new bench for the hearing of the case. He may then sit in accordance with the provisions of section 49 and the case can be heard by the new bench constituted by him, the previous bench having by reason of death or incapacity of its members come to an end. To illustrate our point we may take a case where all the five justices constituted by the magistrate. There is then no bench in existence and there is thus for no reason why the magistrate should not again sit under section 49 of the Act and constitute a fresh bench. If the justices, capable of sitting, are less than three the same result should follow and the magistrate should have the power to constitute a new bench. If however three justices are still available who can function, the magistrate has no right to interfere and appoint new justices to replace the old ones or put in a new bench to replace the old bench.

The act nowhere provides for the removal by the magistrate of a validly constituted bench to a bench

High  
Court  
Lahore  
S. No. 100  
of 1924

except in a case coming within the provisions of Rule 84 D. The fact that the respondent has got half driven out to interfere with a bench and replace one judge by another at any time during the pendency of a case even when hearing has been commenced and a part of the evidence has been recorded would not only be against the rules of natural justice but might result in serious abuse of power. A bench once in first case a. has more will and pleasure, and for reasons of its own that may not be shown commendable replace one judge by another if that judge happens to be absent on account of ill health or on any other good ground even though the Act does not make it obligatory on every bench to be present at every sitting of the bench.

The Act makes a claim that the Panchayat Adalat was not bound by technical rules of procedure &c. etc. etc. and we are therefore always reluctant to interfere with decisions of a Panchayat Adalat on technical grounds. It does not appear from the record of the Panchayat Adalat, nor is it suggested in though they have filed several affidavits, that any objection was taken to the nomination of Bhagwatin and Ram Adhar Singh by the respondent. There was bench of three judges properly appointed who have acted throughout and who were parties to the judgment. It is not suggested that the two new judges bench of three judges properly appointed who first acted in that the other three judges might have given a decision different to the one that they gave on the 2nd of August 1922.

We have already said that there is no mention made in the judgment of the learned Sub Divisional Magistrate that the point was argued before him. By the correction we now refer to Rule 84 D which provided that if a party is dissatisfied with the proceedings of a bench he has to make an objection before the commencement of the hearing of the case immediately on

the receipt of the information. If he does not do so he is not allowed to object later on after the proceedings have commenced. In General Marshallman's No. 1564 of 1951 decided on the 12th October 1954 it was held that the provisions of sections 49 (2) of the O. T. Procedure Act do not go to root of the jurisdiction of the bench and that if no objection was taken to the constitution of bench it was not open to them to raise that point in a writ petition under Article 226 or 227 of the Constitution.

We are therefore not prepared to interfere and dismiss the application but make no order as to costs.

*Application dismissed*

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or notice proper for time to pay costs for, made before  
serving order on application on formal judgment—Duty of  
court—Power to refuse, at previous order

In an application for permission to sue, as a proper  
respondent, the order dissolving the parties to sue in formal  
process, an application and a return has been made to  
the court praying that time for payment of costs, be  
granted it is the duty of the court to pass a suitable order  
on that application before rejecting the application, the per-  
mission to sue as a proper respondent against persons  
sued under a 141 Civil Procedure Code and grant time  
also if the law court of the case and the document is no  
longer before :

A court has jurisdiction to correct an error made by re-  
jecting an application before rejecting the application and by add-  
ing time a suitable order dealing with the proper document  
in the application for time

Telegraph Hugh v. Birmingham

—O 11 v 21 s 141—Order of a court being deliberately  
disobeyed by a party in contempt—Court of the jurisdiction in  
order of default

In a proper case where a court is satisfied that a party to a  
litigation has been contumacious and has deliberately disobeyed  
the order of the court and has been showing no respect to the  
jurisdiction to enforce the law, or to order of the court under  
O 11 v 21 or a 141 of the Code of Civil Procedure

Green v. Co. v. Richmond

—O XXXIII or 1 & 7—Order application rejected—Power  
to order payment of costs for being to be enforced

Code of Criminal Procedure, 1880 s 177 178—Order returned  
on Application—Order sent to Magistrate—Application—  
Complaint where to be filed—Jurisdiction of a Magistrate—Indian  
Penal Code, 1860 s 489—Application—Magistrate sent to

Where it was alleged in a complaint that the complainant per-  
mitted 744 bags of opium from the accused at Bhatia in Rajas-  
than, that he asked the accused to send 800 bags to him and the  
remaining 744 bags to him at Aligarh and the accused refused only  
to 141 bags, or 141 bags were delivered to him and the remaining

made by the complainant in the case of filing the complaint was as follows: the accused persons out of delinquent money did not send the bags of diamonds.

*Weld, Ex parte Matteson and Shindler, JJ. Western Canadian J. 1887-8*—that in case of s. 177 of the Criminal Procedure Code the misappropriation occurred in the place where illegal lottery tickets was made, namely, at Kamour and at with the ticket at Allagash and the prosecution.

*Weld, Ex parte* that there being no evidence on record on paper that more than 100 bags were actually purchased by the complainant that could have been in circumstances with regard to 100 bags in Canada within the meaning of s. 100 Indian Penal Code and thus an offence of general breach of trust was committed.

*Baron De v. Lady Norton De*

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*Constitution of India, Art. 21 (1) (a)*—Advisory Board, opinion of—Whether can issue prohibition of High Court in domestic relation of grounds of Government—*Prohibition Devising Art. 192 s. 1*

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*—Art. 112—Educational Code, paragraph 10*—Education of students by Inspector of Schools or headmaster or agent from Principal—Order of maintenance of educational paragraph 10 of Educational Code—*Majority opinion, principles of*

Where an Inspector of Schools passed an order maintaining an applicant *K* along with other students without making any objection about the actual participation of *K* in the trouble in even taking the report from the Principal of the College in which *K* was residing and where some trouble had occurred on the day of incident.

*Weld, Ex parte* that order of maintenance in maintenance of paragraph 10 of the Educational Code and not having been made in a report of the Principal the Inspector of Schools had no power to make it. The order also violated the principles of natural justice.

*English Church v. The Inspector of Schools*

*Terrillhouse*

36

*—Art. 112—How appears on the face of evidence? High Court can grant it.*

The High Court in the exercise of its jurisdiction under Article 112 of the Constitution can remove an order which is apparent on the face of the record and which goes to the root of jurisdiction.

*Indian States v. The State of West Punjab*

420

- Art. 118*—*License of a cloth dealer cancelled by District Magistrate*—*Application for renewal of license not heard and decided upon*—*Order, if administrative*—*Power of High Court to quash administrative orders*

The application, opposing an issuance of cloth as *K* under the title of *KI* was granted; hence on Point 33, under the Controlling Cloth and Raw Denim Licensing Order as lay and well controlled cloth. This license was renewed twice and was already in issue on the 10th October 1942. Before its expiry on the 10th Nov. 1942 *KI* was served with a notice by the District Magistrate of *K* that his license had been cancelled on account of the malpractices indulged in by him and his lack of reputation; that he was attended on repeatedly of making a representation, or of being heard before passing orders of the orders cancelling his license or refusing to renew the license.

Upon an application for issue of a writ under Article 118 of the Constitution of India.

*Held* that in spite of the act of the Licensing Authority in refusing to renew the license of *KI* being an administrative act the order is quashed as High Court has power under Article 226 of the Constitution to issue decrees and orders as well as writs for any purpose.

*Meera Kameswar Prasad Kishore v. The District Magistrate, Raipur*

433

- Art. 226* *Art. 226* (g)—*License of a person's motor cancelled after expiry*—*Whether provision of Art. 226* (g) *encompassed*

Where the license of a person's motor issued by the Collector of *K* permitting him to drive his preference vehicle the Collector must compound was cancelled after holding an enquiry.

*Held*, that the person's motor has no legal remedy and there is no transgression of the provisions of Art. 226 (g) of the Constitution.

*Mohammed Yous v. District Magistrate, Raipur*

434

- Art. 226*—*Police Act 1941 s. 7*—*Enquiry against a police officer under it*—*Police officer stopped from cross-examining witnesses*—*Enquiry, if valid*—*Writ of certiorari, whether, could be issued*

Where a Station Officer is an enquiry under s. 7 of the Police Act against him was stopped from cross-examining the

provisional sentence on the ground that they were finding quarters.

Still, this inquiry was not proper as it deprived the accused Officer of an adequate opportunity to defend himself and he was entitled to the issue of a writ of certiorari.

# **Lala Purand v. Inspector General of Police**

202

—Art 228—Power of Commission—Where on the part of applicant no large grounds of showing were being other Tribunal—Was whether could be awarded G O no 449-EE(2)PMS—P(EE) 51 of 1946—Days of busy days period for going on duty by an individual or any other extended period—Grounds of writ—Award the period.

A writ of certiorari, which is on the discretion of the High Court to issue under Article 228 of the Constitution, shall not be arbitrarily issued in cases where an applicant failed to urge the grounds on which he claimed the writ of certiorari before other Tribunal, where he could have properly urged them unless he could show that he was unaware of them when the matter was before other Tribunal.

Under clause 36 of G O no 449-EE(2)PMS—P(EE) 51 dated March 15 1946 the Governor is given a power an order extending the period for the making of an appeal by an individual even after the expiry of busy days or any extended period.

# **The J. K. Iron & Steel Co. Ltd. v. The Labour Appellate Tribunal of India**

209

—Art 221—Words "removed", showing cause—Showing explanation—Civil Service Regulations paragraph 444—Word "removed", used in it, if included in "removed"—Paragraph 444A whether valid.

The word "removed" in Art 221 of the Constitution is not used in its wider connotation, but refers to a removal which is by some fault or misconduct of the employee himself who may try to explain it.

A "removal" under paragraph 444A of the Civil Service Regulations is not competent unless the word "removed" used in Art. 221 of the Constitution.

Rule 274A of the Civil Service Regulations is a valid rule not affected by rule 140 in the case of Civil Service of Regulations and not voided or abrogated by rule 51 of the Fundamental Rules.

The experience showing given as used in Art. 114 of the Constitution does not imply a mere opportunity of submitting an explanation but implies that an adequate opportunity of leading evidence in support of the charges against persons concerned and cross-examining witnesses named against them might be given and of adequate opportunity of cross-examining witnesses of the other side and of submitting evidence should also be given.

#### Shree Lal v. State of Uttar Pradesh

115

—Art. 115—*Power of an Election Tribunal—Prerogative of a High Court cannot quash*

116

—Art. 115—*Power of superintendence often to be exercised*

117

**Contempt of Courts Act, 1926, s. 2—Complaint filed by a temple trustee—Case tried by a Magistrate, first class—Dismissal impugned—He requires satisfaction or representation made by complainant to the Prince Minister of India—Letter, if necessary to contempt**

On a complaint filed by D a Magistrate of the first class tried the case against an accused under s. 100 Indian Penal Code and acquitted him. D did not file any revision but wrote a letter to the Prince Minister of India in the form of a petition a representation in which serious allegations of corruption and perjury were made against the Magistrate. This letter was ultimately forwarded to the District Magistrate who neither called D an informant nor informant nor held any enquiry but referred it to the Legal Commissioner or Government for initiating contempt proceedings against D.

Held that the letter or representation made by D to the Prince Minister of India did not amount to him in instituting the case as it was no general publication and caused no embarrassment to the trial of the Magistrate.

#### State of Uttar Pradesh v. Rajan, Sushila Lal Jain

118

—*Crimes Act under investigation—Case not sent for enquiry or trial to a Magistrate's Court—Contempt proceedings if, and be started for publication of news or articles—Proceedings which are otherwise—Application of Contempt of Courts Act, if possible in such case in India*

Contempt proceedings cannot be taken in connection with a publication of news or article in, long as a criminal case is





——— *vs.* *U.S. Official*—*Presumption* rightly held by Magistrate—  
Opposite party producing a copy of *Patterson's* record—His  
evidences as to about the existence of such a way that two roads  
existing are shown as *no—* *U.S. Magistrate* *refused* to disbelieve—  
Single Judge ruling of the Court—Whether looking on such a  
belief as preference to *Barren* *Branch* ruling of either Court

Even a single Judge ruling of the Court of an earlier time is  
looking on the cases before as preference to a later *Barren*  
*Branch* ruling of another Court

Where a Sub-Divisional Magistrate in proceedings under a  
121 of the Code of Criminal Procedure held a preliminary  
inquiry is directed by a 121A of the Code and the only  
evidence produced before him in support of the detail of  
the existence of public way was a copy of the *Patterson's* record  
in which two roads obviously existing were not shown though  
it did not contain any entry about the existence of the public  
way in dispute

And that the Magistrate was justified in holding that there  
was no reliable evidence in support of such a detail

*Kashin v. State*

21

*Damages*—*Unproved* *damages* and *Fatal* *disturbance*  
*between*

25

*Electoral* *Code*, paragraph 10—*Restoration* by *Inspector*  
*without* *inquiry* as *open* *from* *Principles*—*Natural* *Justice*  
*principles* of

26

*Essential* *Regulation* (Temporary Powers) Act, 1938 s. 1(1)—  
*Application* of *order* *under* *that*, *alternative* *provisions*  
*of* *many* *one* *and* *other* *general* *regulations*

The *application* of an *order* under s. 1(1) of the *Essential*  
*Regulation* Act does not *imply* a *consideration* of *many* *one*  
*and* *other* *general* *regulations* though the *burden* of *proving*  
*that* *it* *is* *in* *the* *order*

*Gopal* *Wadh v. State*

27

*Forest* *Prohibit* *The* *Act*, 1926, s. 5(1)(b) sub. 1 s. 5—*Page*  
*contents* *covered* by *order* *between* *that* *November*, 1941  
*and* *10th* *February* 1942—*Completely* *extinguishing* *power* *for*

the years 1942-43, 1943-44.—Whether from 21st November 1941 to 21st March 1942 and from 21st April 1942 to 21st March 1943

The nature of K as incorporated firm dealt in selling building material from the warehouse. It started its business on the 21st November 1941 and between 21st November 1941 and 21st February 1942 it secured two contracts. In the building agreement it was provided that M & K would have to look after the maintenance of building for a period of one year after its completion which ended on the 21st November 1942. M & K claimed that up to 21st October 1942 it had spent a sum of Rs.19,500 in the maintenance of building and the money deposited with it withheld a portion of payments due under the bills submitted by it and Rs.19,114.11 and Rs.19,171 were paid to it during the assessment years 1943-44 and 1944-45 respectively.

Upper question refused.

Maid that the previous year for the assessment year 1943-44 was 1st the trade month ending on the 21st March 1942.

Maid further that the chargeable accounting period for the assessment year 1944-45 was from the 21st November 1942 to the 21st March 1943 and for the assessment year 1945-46 it was from the 1st April 1943 to the 21st March 1944.

Verdict: Mandamus, Rectitude, Incom. Tax v. Commissioner of Income Tax

241

—A BFF—Partnership firm working efficiently as partners.—One of the partners a qualified engineer.—Income of firm.—Whether dependent mainly on personal qualifications of partners.—Skill and knowledge, if necessary in any business.

The nature of F was an old partnership firm and the partners worked as partners at the behest of K. The partners had acquired considerable experience and one of them was a qualified engineer which enabled him to carry on the business more efficiently than others. They executed a lot of Government work and out of the profits of Rs.78,334 the share made by sale of Government properties was Rs.78,334. They had done much better than several other firms of similar size and the success of their business was not due to any single cause.

Upper question refused.

Held, that the income of *P* depended mostly on the personal qualifications of the person so compensated, by a [?] of the Exam Profrs Tax Act and the Tribunal acted in deciding the point, not on the facts of the case, but upon the view as to what the [?] holds as special qualifications were needed to be carried up as incomes.

Held, further, that a certain amount of skill and knowledge is required in every business as a profession is required in a larger degree though there may not be the sole criterion. In judging whether a particular business is a profession or not.

*P. Sargant & Co v. Commissioner of Income Tax.*

4

—[?] [?].—Certain acts of money received by a person as explained from the facts of a case.—Further on income to explain various—[?], whether a revenue receipt.—[?] acts of fact to be decided on materials available.

If from the facts of a case it appears that during the relevant account period the defendant carried out of money, the burden is on him to explain from where he got the same.

Where an account shows that a receipt—or two items being known—a receipt is made the burden is on the account to show the true nature of the receipt and who has claims that it is not taxable income. If the explanation is rejected the Tribunal has to decide—[?] on both materials as may be available, whether the money represents revenue receipts taxable as income of the relevant account period.

The question whether a receipt is a revenue receipt taxable as income received in a particular year is always a question of fact which has to be decided on the materials available. In each case the revenue authorities are entitled to take into consideration the fact that the explanation given by an account is either unreasonable or a false and then to consider whether the circumstances shown on the other materials available along with the circumstances would entitle them to hold that the amount so deposited represented the uncollected income of the account in the year in question. The mere fact that an explanation of the income is unsatisfactory does not necessarily lead to a conclusion that the receipt is a revenue receipt taxable as income.

*Malabar Lal Puri, Charit v. Commissioner of Income Tax.*

**Family arrangements—Family court: suspension of High Court—Amalgamation Order, 1948, s. 17 (3)—Whether comprehensive creation of a new Bar Council.**

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272

**High Court Rules, 1951 Chapter XXIII s. 23 of which reads:**

*Rule 23 Chapter XXIII of the Rules of the High Courts providing for an appointment to be made for settlement the leave to appeal to the Supreme Court under Art. 132 (1) or Art. 134 (3) (a) of the Constitution, before or at the time of the delivery of judgment in criminal matters is not ultra vires.*

*State of Lal v. State*

31

**Indian Arbitration Act, 1940 s. 34.—Sec. for breach of contract and compensation for loss.—Claim for compensation independent of arbitration agreement—If stay of suit by court before judgment.**

*It is a joint Hindu family firm. filed a suit against the Union of India for breach of contract by the East Indian Railway and claimed Rs 500 as damages for breach and a sum of rupees one lakh as compensation for loss. On an application by the Union of India the Civil Judge stayed the suit under s. 34 Arbitration Act. It was contended that para. 65 of the agreement which provided that, in the event of any question or dispute arising under these conditions or in connection with the execution thereof or in any matter the decision of which is specially provided for by these conditions, the same shall be referred to the award of an arbitrator shall be barred by the trial of the suit.*

*Held that the claim for damages being covered by para. 65 of the said agreement, could be referred to arbitration, but the claim to recover compensation for loss not falling within the first clause of the agreement was maintainable by a court of law as the claim under suit was totally distinct from and triable dispute arising between the parties.*

*Chand Bhanu Lal Jais v. Union of India*

34

**Indian Companies Act, 1913 s. 171—Divide obtained by a Company—Appeal—Application for review of appellate judge notwithstanding of Company Judge to be allowed if necessary.**

*Where a winding up order was made in respect of a company when it had obtained a decree in suit maintained by it and when an appeal preferred by it against an order allowing defendants' objection under s. 47 Civil Procedure Code had been dismissed an application for review of the appellate judgment of*

the application came being not a legal proceeding commenced against the Company within the meaning of s. 171 of the Companies Act, can be made by the defendant without obtaining leave of the Company Judge.

**Robert & Co. v. Federal Bank & California National Bank.**  
121

**Indian Contract Act, 1872 : 74.—***Where in a family arrangement whether a family—liquidated damages and penalty determine of*

In a suit for possession of certain immovable land whose proprietors the question was whether the following clause in a family arrangement entered in between the parties can be said to be in the nature of a penalty, within the meaning of s. 74 of the Contract Act.

If the amount of these arrears becomes due by the first party and the second party does not remove it on our account, the said party shall have the right to demand the fixed compensation and retain possession over the property which she has left in possession of the first party at present and which is mentioned in the list of compensation.

The clause of the first party shall be struck off and that of the second party entered in public paper. The first party shall have no objection to it. The second party shall have the right to retain the remaining amount of the fixed sum, and such amount abstracted from the property of the first party who shall not be liable for the amount so fixed.

Held that there was no penalty imposed, which retained along with the arrears but the contract itself was to be abrogated according to the clause on the happening of a contingency, and no party was being subjected to any particular hardship because of the default but on the other hand parties were being subjected to the position in which they were respectively at the time of entering into contract.

Held further that the clause of abrogation, between liquidated damages and a penalty is that the clause of a penalty is a promise of money stipulated on arrears of fixed sum while the clause of liquidated damages is a promise estimated pre-estimate of the damage.

*Adin Dey v. Champa Dey.*

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**Indian Evidence Act, 1872, s 2 (3)—Indian and Colonial Courts Jurisdiction Act 1928 amended in 1940 (2)—**  
*Couples domiciled outside India—Indian courts whether have jurisdiction to pass decrees for dissolution of marriage*

Indian courts have no jurisdiction acting under the Indian Evidence Act or under the Indian and Colonial Courts Jurisdiction Act to pass decrees for dissolution of marriages of couples domiciled outside India.

*Vis. Anand alias Anand v. Reginald Frank Lewis*

42

**Indian Evidence Act, 1872, s 59.—Proof of a document—**  
*Witness, secondary evidence—Proofs of Property Act, 1917 s 108—Mortgagee's right to grant a lease—If deed to be used by exhibiting a simple mortgage—Deed must be a mortgage deed—Rights of lease and lease*

A deed of a document cannot be treated as secondary evidence

A mortgagee's right to grant a lease of property does not come to an end by executing a simple mortgage deed as between the lender and the borrower the lender is not entitled to rely on the clause in mortgage deed that the mortgagee shall not the consent of the mortgagee in granting lease and says as that granted alone that the lender had no power to grant the lease and it was void

*Datta Chaud v. Hira Kishan Dax*

171

**Indian Income Tax Act, 1917, s 16(2). (a)—Firm under**  
*taken by proprietors of a firm for procuring business—Fixed charges paid by them—Whether allowable expenditure—*  
*Excess not so received from partners of a firm is income paid to them by firm—If taxable income in the hands of firm*

The fixed charges paid by proprietors of a firm in respect of a new undertaking for the purpose of procuring business for the firm are not allowable expenditure under s. 16 (2) (a) of the Income Tax Act

The amount received from the partners of a firm on the amount contributed by them after adjustment against payments of interest made to them by the firm is taxable income in the hands of the firm

*In. Ram Mahadeo Prasad v. Commissioner of Income tax*

123

- *Id.* (3)(c)—Order passed by Appellate District Court cannot stand—Income tax Officer, if bound to follow the directions given by the Commissioner in making fresh assessment—Principle not stated by Income tax Officer—Whether Income tax Officer and fresh return necessary to make—But judgment sustained by an Income tax Officer—disapproval by higher courts—Principle to be followed

When an order is issued by the Appellate Income Tax Officer under sub-sec. (3) of rule (3) of Ch. VI of the Income Tax Act setting aside the original assessment, an Income tax Officer is bound to proceed in accordance with the directions given by the Appellate Income Tax Commissioner and any material on the record already submitted and which had not been held to be inadmissible can be taken into consideration in making the fresh assessment.

A notice issued by the Income tax Officer in the first year was—perhaps calling upon an assessee to explain his accounts does not bind the Income tax Officer and the Income tax Officer is not bound to give a fresh notice calling for a fresh explanation from the assessee.

Instructions by the appellate or other higher courts with the sanction of the law judgments by an Income tax Officer must be on the same principle on which appellate courts usually state law with the sanction of directions by a trial court.

*Bank Engineering Works Export v. Income tax Officer of District no.*

175

- *Id.* (3)—Closing stock valued by assessee at cost price at previous year—Stock valued by assessee at cost price at previous year—Whether, goods entitled to value for stock at market rate

The assessee is firm carrying on wholesale cloth business showed a profit statement of Rs.121,175. The assessee showed a balance of Rs.2,165 in favour of assessee. After deducting expenses he showed a net loss of Rs.12,165 and in preparing the books and tax returns he valued his closing stock at the market rate to Rs.1,14,164. The gross profit of the said stock was Rs.12,165. The Income tax Officer the Appellate Court, Commissioner and the Tribunal were of opinion that the assessee should have valued his closing stock at the cost price in the last year closing or previous year.

Legal questions referred.

Held that a return for cost price of the stock was not entitled to value his closing stock at market value because the Depo-



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must exist and show that the person had always valued his stock at less price but there was nothing on the record from which it could be deduced that at those years the market price was less.

**Watt Swapp, Reorganized v. Commissioner of Income tax**

254

**Indian Limitation Act, 1908 s. 35 and 34b—Redemption of mortgage—Deed of compromise—Status of mortgaged property as to—Whether an acknowledgment—United Provinces Agricultural Bank Act, 1904 s. 12—Application for redemption—Period of limitation—Starting point.**

A mortgage of the mortgaged property is a deed of compromise only for the purpose of prescription of property and not with an idea of acknowledging the liability of redemption then any payment is an acknowledgment within the meaning of s. 35 of the Limitation Act.

It is open to a mortgagee mortgagee in an application under s. 35 of the Agricultural Bank Act to ask for the recovery of possession of the mortgaged property without payment of the mortgage money if it has been paid up from the contents of the property and the period of limitation for such an application is every year from the date when the mortgage money was so received and the right to recover possession accrued.

**Parsons, Limited v. Bankers' Trust**

26

—*decided*—*Property of chargee wrongfully attached in execution of decree by a decreeholder—decided by chargee for wrongful seizure of funds under s. 20.*

When in the execution of a decree against a judgment debtor the decreeholder wrongfully attaches property belonging not to a chargee but to that chargee for recovery of charges the wrongful seizure against the decreeholder is provided by Art. 20 of the Limitation Act, and the limitation begins to run from the date of attachment.

**Leitch, Friend v. Mr. Bannan**

67

**Indian Penal Code, 1861 s. 305—death by one person armed with knife—how far he has after fall—stroke deliberate, planned and calculated—s. 305 applies.**

When it is established that P caused the fatal injury on the head resulting in death of A then P must, A lies on the lay with a knife and then after his fall gets a striking

[illegible]

benefit of himself, his family and descendants, generations after generations. He was the mawla, for his life came and thereafter he served the Mohammedan Imam defendant no. 1 and after him his other sons and then his other descendants, when according to the rule of progeniture some spouse, was to be put to divorce and as testamentary situation to the members of his family generations after generations. Agha Ali died on 17th February, 1857. The plaintiff being the eldest son of the first son of Agha Ali, claimed succession to the property under the rule of local progeniture but defendant no. 1 being an possessor of the property defended the suit as the mawla of the waqf of 1803.

Held, (1) that no delivery of possession is required in the case of waqf specially when the first mawla happens to be the waqf himself and no significance can attach to the contention to get the matters of names altered after the waqf had been made.

(2) When a waqf after making a house fully waqf deals with the property as his own, or puts the property on his own use then acts of the waqf will only amount to a breach of trust and would not in any way affect the validity of the waqf if the waqf when made was otherwise valid.

(3) That the conversion of the nature nature of the waqf property may validly be made for the benefit of the waqf for family and descendants and such conversion is to be made for these circumstances and supports not in the manner of sale in which the phrase *Muhammadan Ali* was used in s 38 Civil Procedure Code and s 4 of Transfer of Property Act, but in a large sense of present not for all local purposes.

(4) That the mode of alienation mentioned in s 11 of the Oudh Reg. is Act requires the gift of a taluqdar to alienate his property in any other use. The substance of testamentary restricted by s 5 of the Act then naturally and necessarily have reference to the mode of transfer mentioned in s 11. If the transaction is not an alienation of the nature specified in s 11 it cannot be made.

(5) That a waqf established as a gift to God Almighty and is permissible to be made under the Oudh Reg. Act provided it does not contravene the provisions of s 11 of the Act and provided further that it is in the here mentioned in s 11 of the Act.

(6) That though the nature of the waqf property is immutably fixed at the time of its creation, yet its usufruct is transferred, to unknown descendants, of the waqf, generation after generation. The usufruct which exists in such waqf is common to the progenies of a 12 of the Graft Endow Act. The transfer of the usufruct of an estate is a transfer of a right or an interest in such a tenor.

(7) That a gift for religious and charitable purposes not regulated by a 12 of the Graft Endow Act is a gift covered by a 12 and therefore covered by a 12 of the Graft Endow Act. It is not to be considered to be an exception to a 12 and all gifts for religious and charitable purposes must conform to the provisions of a 12.

(8) That a waqf established, is created because it complies with the provisions of a 12 of the Graft Endow Act.

(9) That it would be violating the immutability of the waqf to turn the waqf from a waqf established into a public waqf by applying the income of the waqf property to public and charitable purposes, and the waqf must therefore be held to be valid as a whole.

Mohammed Isah, Ak. v. Taher Ak.

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Muzimuz Waqf Validation Act, 1915 as to its scope of

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Graft Endow Act 1881 as to 12, 12 and 12 scope of

155

Section—Symptoms—Sufficiently proved under a 5 Rule Criminal Act and a 6 of the Transfer of Property Act, value

44

Payment of Waqf Act, 1881 as to 12—Delay in payment of wages—Wages paid before application by Inspector of Factories—Magistrate's order compensation—Total sum in dispute about Rs. 500—Appeal is competent

Under a 12 of the Payment of Wages Act a magistrate can not order compensation to be paid by an opposite party of the wages that paid before making an application by the Chief Inspector of Factories.

In order to make an order of a magistrate applicable under a 12 of the waqf Act, all that is necessary is that the total sum ordered to be paid should exceed Rs. 500. It may be composed of wages due or of compensation due or of wages and compensation both.

Chief Inspector of Factories, D. P. v. E. Mohd.

1

Prevention Detention Act, 1904 as to Construction of India, Act 1915 (a)—Operation of Advisory Board—Whether can and the jurisdiction of High Court to determine validity of grounds of detention

The question of an *Ad-hoc* Board when under s. 1 of the *Provisions, Detention Act* or of (3) (4) of Art. 12 of the *Customs Act* does not operate to cause the jurisdiction of High Court to terminate without the grounds upon which a person was detained satisfied the requirements of law

*Pratt v. Attorney-General* v. *Superintendent, Central Prison, Agri*

*Professions Tax* *Legislation Act, 1944* s. 1—Represents any one person only, including natural persons—*Constitution of India Act 1950* Art. 11—*Professions Tax* *Legislation (Amendment and Validation) Act, 1946* s. 2—Tax on occupations and property of subject in connection with *Professions Tax* *Legislation Act*—*Professions Tax* *Legislation (Amendment and Validation) Act* whether, *supra* *Article 13* and *14*—*Detention Board Act, 1932* s. 100 and 104

*R*, a limited company was a carrier and respondent owner lessee of the railway station of *M*. The *Detention Board* cause of detentions and property tax on *R* for carrying on business in the rural area

On appeal by the Board

*Held*, that in view of agreement between *R* and the railway authorities, *R* is not a servant of the railway authorities, but is the *Attorney-General* or *Owner* and could be taxed under s. 114 and s. 140 of the *Detention Board Act*

*Held* further that the expression, any one person, in s. 1 of the *Professions Tax* *Legislation Act* encompasses taxing of any person which includes not only an individual but persons also

*Held*, further that the *Professions Tax* *Legislation (Amendment and Validation) Act* does not abrogate *Art. 13* and *14* of the *Constitution*

*Held*, further that in view of s. 1 of the *Professions Tax* *Legislation (Amendment and Validation) Act* the tax on services and property levied under s. 100 of the *Detention Board Act* is not subject to limitation laid down under the *Professions Tax* *Legislation Act* and the maximum amount of such tax can be the amount leviable under the *Detention Board Act*

*Detention Board, Agri* v. *Messrs G. F. Kallier and Company*

**Representation of People Act, 1911** in 11 and 12—Candidate withdrawing his candidature without notifying electioneer in 1, a temporary party in an election, petition—Returning of candidate in a 11 explained—Corruption of India Act 1925—Time of day by an election tribunal—What parties allowed, High Court can interfere

A candidate who withdraws his candidature on the day of voting, and does not notify the election agent to be a duly nominated candidate in the election, and is not a temporary party in election petition

Under s 11 of the Representation of People Act a candidate must be a person at the polling station place who occupies as a candidate right up to the time that the election is held

An error of law in the decision of a preliminary case which an election tribunal is competent to determine is no ground for quashing the order of the tribunal in the exercise of writ jurisdiction by High Court

*See Kumar Pandey v V G Gell*

114

**Reasons**—Decree obtained by a Company—Appeal—Appellate judgment—Application for review—Leave of Company Judge if necessary

164

**Reliefs**—Relief of the Court even if single Judge is binding on courts below in preference to reliefs of division bench of other Courts

51

**Right**—But for wrongful seizure of property in execution—For party of wronger wrongfully attached—Limitation Act 1908 Act 12—Limitation runs from date of attachment

17

**Transfer of Property Act, 1912** s 105 Notice—Intervenor's notice under s 5 of Rent Act and s 4 of the Transfer of Property Act of can be given

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—s 105—Mortgage simple—Interplever whether can give a lease—Lease and lease rights of

22

**United Provinces Aggravated Relief Act, 1912** s 12 appeal of—United Provinces Debt Redemption Act 1916 s 12

72

—s 12—Mortgage paid up from proceeds of the property—Redemption—Limitation—Running point

76

**United Provinces Court Fees Act, 1910** s 7 (iv) Schedule 2 Act 1 (15)—United Provinces Aggravated Relief Act, 1912 in 12 and 13—Appellate for redemption of mortgage money mortgage—Appeal in High Court—Interim order of appeal—Payment of Court fee—No order

The costs be payable on the remittance of appeal against the decision of a Civil Judge in proceedings on an application under s. 11 of the Agricultural Relief Act is on the amount or value of the subject matter in dispute or appeal which would be the market value of the property in question.

*Folkes Singh v. Bhatner Lal*

99

United Provinces Debt Redemption Act, 1902 : s. 4—Order dismissing an application under s. 3—If appealable.

An order dismissing an application under s. 3 of the Debt Redemption Act is not appealable.

*Chandra Lal v. Mst. Shering*

101

—s. 11—United Provinces Agricultural Relief Act, 1902 : s. 11—Appeal—Its effect.

s. 11 of the Debt Redemption Act unconditionally and for all purposes repeals s. 11 of the Agricultural Relief Act and no savings enacted after 1902 can be retained under it.

*Solomonson v. Shastri*

103

United Provinces Encumbered Estates Act, 1904 : s. 10(1) (2). —*Debtors*—In definition.

A debtor under the Encumbered Estates Act is a person who has any pecuniary liability which is not only a personal liability but also includes a liability recoverable only from his property.

*Mohamed v. Gokarn Singh*

104

United Provinces Revenue Act, 1901 : s. 80—*Person*, interpretation of—*Detention—Award—Debtors*—Must be not only a debtor by person but also—*Debtors*—Civil Court—Specific Relief Act, 1878 : s. 43—*Scope* of—*Code of Civil Procedure* 1908 : s. 1.

The word 'person' in s. 107 of the United Provinces Land Revenue Act 1901 has reference to the person before the revenue court and parties to the case before that court and has no reference to persons who were not parties to the case.

A suit to set aside a decree of a revenue court passed on the basis of an award of arbitrators appointed under an agreement of arbitrators filed by persons who were not parties to that agreement is not barred by s. 807 of the United Provinces Land Revenue Act 1901.

Such a suit falls clearly within the purview of s. 43 of the Specific Relief Act 1878 and is of a civil nature.

Regulations 4 to 11 of the Civil Procedure Code, 1908 has no application where the petition was not a representation one by virtue of proceedings having been taken under the 1 to 8 of the Code and the petition sought to be heard by the division instead of so that one cannot be deemed to have been represented as that petition.

*Mallika Nand v. Suresha Nand*

190

**United Provinces Medical Act, 1917, s. 25—A. Another Medical Council to remove a person's name struck off the register of graduates**

There is no provision in s. 25 of the Medical Act which enables the Medical Council to remove the name of a person simply because he has been struck off the register of graduates of the body which originally granted the degree.

*D. M. Kishore v. The U. P. Medical Council, Lucknow*

223

**United Provinces Municipalities Act, 1914 s. 18(3)—Plan sanctioned by Municipal Board—Sanction not valid in law—Whether, Board has power to revoke it—Sanction of work may be explained—Failing by law as to it—Unreasonable and invalid**

A municipal board having once sanctioned a plan submitted to it, has power to revoke that sanction, subsequently if it is not a valid sanction in law.

The word *may* in s. 18 (3) of the Municipalities Act has reference to the power to sanction and does not control the existing works of the authorities.

Invalidity by law as to it is not invalid and unreasonable and such as it does not involve an oppressive interference with the rights of the subjects.

*Medical Council v. Shreea Magistrate, Benares*

231

**United Provinces Panchayat Raj Act, 1919 s. 45 and Rules made under it—A panch already appointed by Government—No objection taken by parties against him—A new panch, if one be appointed in his place**

There is no provision in the Panchayat Raj Act or in Rules for appointment of a new panch in place of a panch already appointed and to whom appointment no objection had been taken by parties.

*Lachman v. Government*

235

**United Provinces Panchayat Raj Act, 1919 s. 45(b) rule 44 (1)—Composition of Panch, Arts 155 (3)—Panchayat Assist, if heard by provisions of Criminal Procedure Code**



—Provision of s. 49(2) whether, go to the merit of particular case—Power of superintendence under Art. 227

The provisions of the Panchayat Raj Act do not make it illegal for a Panchayat Adalat which is not bound by the provisions of Criminal Procedure Code to record statements without specifying the offence or to submit one sentence for a number of offences

Wadhwa, (P. C. J.) and Misra, J. Dissent. The provisions of s. 49 (2) of the Panchayat Raj Act do not go to the merit of the jurisdiction of the bench, and if no objection has been taken to the constitution of such a bench by either party in accordance with the provisions of s. 49(2), it is not open to them to state that going to a trial justice under Art. 226 or 227 of the Constitution

(P. C. J.) and Misra, J. Though Art. 227 can be said to be not merely administrative superintendence, the power of superintendence conferred by Art. 227 is to be exercised with sparingly and only in appropriate cases in order to keep the administrative events within the bounds of their rationality and not for upsetting mere errors

Where is a bench consisting of two justices in try a case under the Panchayat Raj Act only one justice belonged to village Hapuraj in which the applicants and opposite parties were resident and the one belonged to other village

(P. C. J.) and Misra, J. Held, that the bench was illegally constituted and had no jurisdiction to try the case and that the defect in its jurisdiction could not be and was not waived by the applicants

Wadhwa further that the exercise of a remedy through an appropriate writ lies to aggrieved parties seeking justice of superintendence of the High Court under Art. 226 of the Constitution. The superintending jurisdiction means to cover only such errors as can be corrected through a writ of certiorari, etc. and that the superintending jurisdiction is exercised through the issue of one such writ

*Shankar v. State*

10000

United Provinces Prevention of Adulteration Act, 1911 : s. 4 (a) (b)—Issue of warrants, if a "venue currently" etc. and whether, an article of food

An article of purchase is merely a description of article sold and is not a "venue currently" within the meaning of clause (a) or (b) of the Prevention of Adulteration Act

This cell is the same as "Landed cell" and is an article of food under s. 7 of the Act.

*Neve v. Belmeland*

111

**United Provinces (Temporary) Accommodation Regulation Act, 1947** of 1947

The words "regulation of house accommodation" in entry no. 2 of List I of the Seventh Schedule of the Government of India Act, 1935 do not include the right to regulate the property under s. 3 of the Accommodation Regulation Act, and the Act cannot be engaged in that regard.

*Rajendra Devi v. Barhar Behram Singh*

472

**United Provinces (Temporary) Control of Rent and Eviction Act, 1947** s. 3 of (3)—Meaning explained—Transfer of Property Act, 1882 s. 100—House under Transfer of Property Act and s. 3 of Rent Act, if can be given simultaneously.

*R.*, the tenant of a premises with monthly, tenancy ending with the end of the month, had not paid rent to *M.*, her landlord since May 1953. *M.* served a notice on *R.* on 24th September 1954 asking her to pay rent due up to end of August 1954 within 15 days and also requested her to vacate the house by 20th September 1954. *R.* has having paid anything. *M.* filed a suit for recovery of rent and expenses.

*Held*, that *R.* not having made any payment within one month of service of notice of demand on her, *M.* had a right to file the suit and the law that she vacate given 15 days time did not restrain the notice.

*Held*, further, that a notice under s. 100 of the Transfer of Property Act and a notice under s. 3 of the Control of Rent and Eviction Act can be given simultaneously.

*Rudhey v. Suresh Maheshwari*

—s. 3 (3) Scope of—House by a tenant of a portion of an accommodation let to him—*R.*, amounts to eviction of that portion.

Given by a tenant of a portion of the accommodation let to him does not amount to a tenant's request that portion of the accommodation and does not give any right to the Rent Control and Eviction Officer to evict.

§ 137 of the Contract of Rent and Eviction Act does not give title any right to an aggrieved person to approach the High Commissioner to review an order passed by the Rent Control and Eviction Officer.

*King Richard v. The Rent Control and Eviction Officer, Rampur*

7

— Held for respondent and grant of rent fixed—Permission for publication of suit obtained from District Magistrate during pendency of suit—Permission fixed—Held for respondent dismissed—And, it could be fixed on the same permission—Arrest of rent accepted by plaintiff for months prior to going to court—Permission obtained, whether before or after.

Where a plaintiff without obtaining the permission of the District Magistrate for the institution of a suit had filed a suit for redemption and arrears of rent and the suit for redemption was decreed in spite of the permission being obtained and filed during the pendency of suit.

Held, that the permission had not exhausted itself and the plaintiff could file a second suit on the strength of the same permission.

Held, further, that in the case of a month to month tenancy a plaintiff an occupying rent for months prior to going to court for redemption does not disqualify himself from claiming his legal right to rent and thereby put an end to a permission obtained for filing a suit.

*Dera Bhand v. Janda Bhand*

10

Quoted *Provanam Tenancy Act, 1919* a 11—*Provanam* suit—Held on it a *Provanam* is a *Provanam* suit—*Provanam* of the village whether entitled to claim *Provanam*—*Provanam* of it is the nature of a 'suit'.

*R.* the proponent of a village filed a suit to recover from *R.* a money and a *R.* by one *R.* a suit of *R.* in payment for three years on the allegation that *R.* was carrying on weaving work in a *Provanam* or a *Provanam* house and that according to the custom established in *Provanam* *R.* was entitled to claim a sum of *R.* per year in payment for the use of land on which *Provanam* started.

The defence was that *R.* was a *Provanam* and had been carrying on weaving business in his residential house since long and that the *Provanam* in the village pay no rent for their houses.

Held, that the payment was not, on the facts established, in the nature of a compensation for land but for carrying on the work of a seafaring profession under his license and that was not recoverable from A.

*Estherdale v. Dr. Colonel Herbert Hulse for Medical and Mental Servs. Done*

215

**Words and Phrases—**

"Aid off"—If article of food 272

"Any one person"—If includes plural persons 221

"Bridement"—Meaning of 188

"Shooting Guide"—Meaning of 188

"Sawyer"—Meaning of 188

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**ACTS AND ORDINANCES**

**OF**

**UTTAR PRADESH**

**JULY—DECEMBER, 1954**

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OTTAWA FOREIGN ENCUMBERED ESTATES  
(AMENDMENT) ACT 1954<sup>a</sup>

†(U. P. Act No. XXII of 1954)

*[Signification English Text of the Uttar Pradesh Encumbered  
Estates (Amendment) Bill, 1954]*

As

ACT

to amend the U. P. Encumbered Estates Act 1934 for certain purposes. U. P. Act XXV  
of 1934.

WHEREAS it is expedient to amend the U. P. Encumbered  
Estates Act, 1934 for the purposes hereinafter appearing; U. P. Act XXV  
of 1934.

It is hereby enacted as follows:

1. (1) This Act may be called the U. P. Encumbered  
Estates (Amendment) Act, 1954. (Insert title and  
commencement)

(2) It shall come into force at once.

<sup>a</sup>The Summary of Debts and Rights (Title) Act U. P. Census &  
Inventory Bill, 1954 (U. P. Act No. XXII of 1954).

<sup>b</sup>Passed at Luck by the Uttar Pradesh Legislative Assembly on February  
15, 1954 and by the Uttar Pradesh Legislative Council on March 16, 1954.

<sup>c</sup>Received the assent of the President on July 25, 1954 under Article  
105 of the Constitution of India and was published in the Uttar Pradesh  
Gazette Extraordinary, dated July 25, 1954.

<sup>d</sup>Published in the Uttar Pradesh Gazette Extraordinary dated July 25,  
1954.

*Amendment of  
section 2 of U. P.  
Act XXXI of 1920*

2. In section 2 of the U. P. Encumbered Estates Act, 1916, (hereinafter called the Principal Act) —

(i) clause (q) shall be deleted

(ii) clauses (h) to (q) shall be deleted, and

(iii) after clause (g) the following shall be added as new clauses (a) and (i) —

(a) a reference to proprietary rights in land shall include a reference to compensation and rebate payable under the U. P. Land Revenue Abolition and Land Reforms Act 1950 and

(i) the expenses, compensation, and rebate payable shall under the compensation act, or the act may be, the rehabilitation grant payable under the U. P. Land Revenue Abolition and Land Reforms Act 1950 and include in the sum of compensation, interest compensation payable under section 25 of the said Act.

U. P. Act of  
1951

U. P. Act of  
1950

*Amendment of  
section 2 of U. P.  
Act XXXI of 1920*

3. In subsection (2) of section 7 of the Principal Act for the words "as laid under section 25 or section 26 of" insert a comma; under section 25 or passed order, under section 27 or section 28, the words "under Chapter V" shall be substituted.

4. In section 8A of the Principal Act —

(1) in subsection (1) between the words "and amend the words" so that it is no longer necessary, in consequence of the acquisition of estates under the U. P. Land Revenue Abolition and Land Reforms Act 1950 to convert the typical form of a mortgage shall be substituted, and

(2) subsection (2) shall be deleted.

5. Section 10C of the Principal Act shall be deleted

*Deletion of section 10C of U. P.  
Act XXXI of 1920*

*Amendment of  
section 10C of  
U. P. Act XXXI  
of 1920*

6. In section 10C of the Principal Act for the word "figure and brackets" (2), (3) and (4), the word "figure and brackets" (2) and (3) shall be substituted.

*Amendment of  
section 11 of U. P.  
Act XXXI of 1920*

7. In the proviso to subsection (2) of section 11 of the Principal Act for the words "such property is transferred to any person under the provisions of sections 24, 25, 26 or 27 or a bond is issued by the Collector in a district under section 28 or 29" the words "the debt has been liquidated under Chapter V" shall be substituted.

*Amendment of  
section 14 of U. P.  
Act XXXI of 1920*

8. For subsection (2) of section 14 of the Principal Act the following shall be substituted as subsections (2) and (3) —

" (2) If the Special Judge finds that —

(a) no interest is due, he may pass a decree for costs in favour of the mortgagor,



(d) an amount is due to the claimant he shall—

(i) pass a simple money decree having regard also to the provisions of section 3 of the U. P. Zamindari Debt Redemption Act 1950 for each amount together with any costs which he may allow in respect of the proceedings on his costs and of proceedings in any court moved under the provisions of that Act together with pre-judicial and interim interest to a sum not higher than 4% per cent per annum; and

U. P. Act XX  
of 1950

(ii) also satisfy the amount of any of such decrees which, in accordance with the provisions of section 3 of the U. P. Zamindari Debt Redemption Act 1950 is not legally recoverable other than that out of the compensation and rehabilitation grant payable to the landlord.

Provided that no pre-judicial amount shall be allowed on the cost of any debt where the creditor was in possession of any portion of the debtor's property to the extent payable on such debt for the period he was so in possession.

(3) Every decree passed under subsection (2) shall be deemed to be a decree of a court of competent jurisdiction, but shall not be enforceable within U. P. except under the provisions of this Act.

3. In section 18 of the Principal Act after the words and figures "section 14" the words "in section 4 of the U. P. Zamindari Debt Redemption Act 1950" shall be inserted.

Amendment of  
section 18 of  
U. P. Act XXX  
of 1950

(4) In section 18 of the Principal Act after clause (3) the following shall be added as a new clause (4A)—

Amendment of  
section 18(4) of  
U. P. Act XXX  
of 1950

Clause (4A)—Amounts which are not legally recoverable otherwise than out of the compensation and rehabilitation grant payable to the landlord.

11. In section 19 of the Principal Act the following shall be added as a proviso—

Amendment of  
section 19 of  
U. P. Act XXX  
of 1950

Provided that amount due which, in accordance with the provisions of section 3 of the U. P. Zamindari Debt Redemption Act 1950 are not legally recoverable otherwise than out of the compensation and rehabilitation grant payable to the landlord shall be recoverable from the compensation and rehabilitation grant awarded as though the money had not been anticipated.

U. P. Act XXX  
of 1950

(5) For subsection (1) of section 19 of the Principal Act the following shall be substituted—

Amendment of  
section 19 of  
U. P. Act XXX  
of 1950

(1) The Special Judge shall advise the Collector—

(a) of the amount of the amount due which is not legally recoverable otherwise than out of the compensation and rehabilitation grant payable to the landlord in respect of the mortgaged estate; and

- (b) of the nature and extent of the property encumbered on the subject under section 11 which he has found to be liable to attachment or sale in satisfaction of the debts of the applicant.

Insertion of new section 12-A shall be added to the Principal Act the following in O. P. Act XIV of 1934.

12-A. Where a decree has been passed by the Special Judge before the commencement of the U. P. Encumbered Estates (Amendment) Act 1924 and the decree was having been already fully satisfied in respect of a secured debt to which the U. P. Encumbered Debt Redemption Act 1922 applies the Special Judge shall upon realization of the amount of the debt in satisfaction with the provisions of the said Act -

- (a) inform the Collector of the reduction so made, and
- (b) certify the amount of any of the decree amount which is not legally recoverable otherwise than out of the compensation and redemption grant payable in the hands of the mortgaged estate

and the decree transmitted to the Collector under section 12 shall be deemed to have been amended accordingly.

Insertion of new section 13 shall be added to the Principal Act the following in O. P. Act XIV of 1934.

13-A. The Collector shall require the Compensation Office and Redemption Grant Office in may be necessary to place at his disposal in pursuance of section 10 of the U. P. Encumbered Estates and Debt Redemption Act 1922 the amount of compensation money and redemption grant payable to the mortgaged in respect of his proprietary rights in land required to be liable to attachment or sale under the provisions of sub-section (2) of section 12.

13-B. (a) Without prejudice to the provisions of sub-section 1 of the U. P. Encumbered Debt Redemption Act 1922 the amount or the funds in account of compensation or redemption grant received by the Collector in pursuance of the compensation notified under section 13-A shall be deposited or realized by the Collector in pursuance of the amount of the secured debt which having regard to the provisions of the U. P. Encumbered Debt Redemption Act 1922 was secured on the proprietary rights in land in respect of which such money has been received.

Compensation Office and Redemption Grant Office in may be necessary to place at his disposal in pursuance of section 10 of the U. P. Encumbered Estates and Debt Redemption Act 1922 the amount of compensation money and redemption grant payable to the mortgaged in respect of his proprietary rights in land required to be liable to attachment or sale under the provisions of sub-section (2) of section 12.

Without prejudice to the provisions of sub-section 1 of the U. P. Encumbered Debt Redemption Act 1922 the amount or the funds in account of compensation or redemption grant received by the Collector in pursuance of the compensation notified under section 13-A shall be deposited or realized by the Collector in pursuance of the amount of the secured debt which having regard to the provisions of the U. P. Encumbered Debt Redemption Act 1922 was secured on the proprietary rights in land in respect of which such money has been received.

- (f) If any balance due of the expenditures or collection of the grant received by the Collector in pursuance of the provisions under section 25-A remains at the hands of the Collector after utilizing the same in accordance with the provisions of sub-section (7) such balance shall be retained by the Collector in discharging the duties other than due of his retained up to the next subsequent to order of grant.

15. For sub-section (1) of section 24 of the Principal Act the following shall be substituted:

Amendment of  
section 24 of U. P.  
Act XXV of 1914

- (1) The Collector shall then within the value of such of the land of the defaulter property other than proprietary right as he is liable to pay, but including proprietary right as found on the map which at the 1st day of July 1914 were included in a Municipality or a Panchayat Area under the provisions of the U. P. Municipal Act 1914, or a townships under the provisions of the Cantonment Act 1924 or a Town Area under the provisions of U. P. Town Areas Act 1914 as shall have been reported by the Special Judge under the provisions of sub-section (2) of section 13 to be liable in attachment or sale.

Provided that the Collector before passing orders under the section of the sale of any property shall have any objections which the defaulter may have to make to the sale of that property.

Provided also that notwithstanding any thing in any other section of this Act the Collector may if he considers fit sell along with any building disposed of under this section the proprietary right of the applicant in any land occupied by such building or appurtenant thereto.

Provided further that the Collector shall leave the defaulter at least one residential house and necessary furniture thereof :-

- (a) the defaulter owns such house and furniture and desires to retain it, and
- (b) such house and furniture is free from any mortgage or charge.

16. Sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41 and 42 of the Principal Act shall be deleted.

Deletion of Sec.  
sections 25, 26, 27,  
28, 29, 30, 31, 32,  
33, 34, 35, 37,  
38, 39, 40, 41  
of U. P. Act XXV  
of 1914.

17. In sub-section (2) of section 44 of the Principal Act:-

Amendment of  
sub-section (2) of  
Sec. 44 of 1914

- (1) in clause (a) for the words and figures section 25 or section 26 the words and figures section 25, section 25-B or section 26 shall be substituted, and

- (2) clauses (b) and (c) shall be deleted.

18. In section 41 of the Principal Act—

(1) as subsection (1) the words "or has granted the mortgage under section 35 or has ordered the payment of instalments under section 37 or 38 or has transferred the whole of the land(s), proprietary rights in immovable land under section 39, the words and figures, sections 37 & or section 38, shall be deleted; and

(2) subsection (2) shall be deleted.

Deletion of sections 35 and 38 of U. P. Act No. 17 of 1954

19. Sections 35 and 38 of the Principal Act shall be deleted.

Deletion of schedule V of U. P. Act No. 17 of 1954

20. The schedule to the Principal Act shall be deleted.

Insertion of a provision after U. P. Act No. 17 of 1954

21. After section 39 of the Principal Act the following shall be added as a new section 40:

40.—The powers exercisable by the Collector under ~~Proviso to~~ Chapter V may, at the local Government's direction, be exercised by the District Judge either generally or in any case, as may be specified.

Amalg

22. Where any provision of the Principal Act has been repealed, altered or amended by this Act, then, unless a different provision appears the repeal, alteration or amendment shall relate

(a) except any thing not in force or existing at the time in which the repeal, alteration or amendment takes effect,

(b) unless the previous operation of any provision so repealed, altered or amended or any thing duly done or suffered thereunder,

(c) unless any right, title, privilege, obligation or liability acquired, incurred or exercised under any provision so repealed, altered or amended, or

(d) unless any remedy or any proceedings or legal proceedings commenced before this Act shall thereupon have been commenced in respect of any such right, title, privilege, obligation or liability so affected;

and any such remedy may be continued and prosecuted in accordance with the provisions of the Principal Act as amended by this Act.

23. For the avoidance of doubt, it is hereby declared that the repeal or amendment of any provision of the Principal Act by this Act shall not affect

Section 41  
of this  
Act.

- (a) subject to the provisions of section 8 of the U. P. Encumbered Estates and Land Reform Act 1936, the continued operation of any mortgage granted under section 34, herein deleted, of the Principal Act whose possession over the mortgaged property was obtained in the mortgage;
- (b) the liability of the debtor for the payment of any annuities ordered to be paid by him in accordance with section 37 or 38, herein deleted, of the Principal Act or the right of the Crown Commissioners to recover such annuities or any part thereof in respect of land revenue under section 39 of the said Act;
- (c) the operation of any order for the issue of funds already made under section 39 or 41, herein deleted, of the Principal Act or the continued validity of any funds already issued thereunder;
- (d) the transfer or sale of proprietary rights in land made under sections 41, 42 and 44, herein deleted, of the Principal Act;
- (e) the operation of any order for the transfer or sale of proprietary rights in land made under sections 41, 42 and 44, where possession over the proprietary rights was also delivered to the transferee or in this case may be to the purchaser in possession thereof;
- (f) the charge created under section 45 of the Principal Act notwithstanding any thing in the Oaths and Statutory Acts 1937 or the U. P. Statute Act 1938 or the death of the debtor after the date of the application under section 8 of the Principal Act.

24. Part II (pertaining to the U. P. Encumbered Estates Act 1936) of Schedule to the U. P. Agricultural Tenants (Acquisition of Privileges) (Amendment) and Miscellaneous Provisions Act 1937 shall be deleted and the orders issued under section 10 of the said Act for the stay of proceedings under Chapter V of the U. P. Encumbered Estates Act, 1936, shall stand repealed.

Amendment of  
Schedule of U. P.  
Act 1937 of 1936

25. For the purpose of facilitating the application of the Principal Act as amended by this Act to any pending process (e.g. in mortgage or enforcement of any right, privilege, claim or liability required, pursued or incurred under the Principal Act prior to its amendment by this Act, any Court or

Trials of Court  
and other authority  
for reference

shall including any, contrary the provisions of the Principal Act as amended by this Act with such alterations or modifications, not affecting the substance as may be necessary or proper to adapt it to the manner before the Court at the authority as the case may be.

16. The State Government may, for the purpose of removing any difficulty particularly in relation to the transition from the provisions of the Principal Act to the provisions of this Act as amended by this Act by order—

Subject to certain  
difficulties

- (a) direct that the Principal Act amended as aforesaid shall during the period of two years next after the commencement of this Act have effect subject to such adaptation whether by way of modifications, additions or omissions as it may deem to be necessary and expedient; and
- (b) make such other temporary provisions for the purpose of removing any difficulty as aforesaid as may be so specified.

RAMPUS REGISTRATION OF MARRIAGES (REPEAL)  
ACT, 1954

(U. P. Act No. XXV of 1954)

[Authentic English Text of the Rampus Registration of  
Marriages (Repeal) Bill, 1954]

AS

ACT

*to repeal the Rampus State Act relating to registration of  
Hindu and Muslim marriages*

Whereas it is expedient to repeal the Rampus State Act  
relating to registration of Hindu and Muslim marriages,

It is hereby enacted as follows:

1. (1) This Act may be called the Rampus Registration of  
Marriages (Repeal) Act, 1954.

(2) It shall come into force at once.

2. The Queen (Lady) Nishu Akhu Nishu Rynah Rampus  
1944, the Rampus State Registration of Marriages  
Act, 1944 and the Queen (Lady) Nishu Akhu Nishu Rynah  
Rampus 1945, the Rampus State Registration of Hindu and  
Muslim Marriages Act, 1945 are hereby repealed.

This Act may be cited as the Rampus Registration of Marriages (Repeal) Act, 1954.

Enacted in Hindi by the Uttar Pradesh Legislative Council on March 11,  
1954 and by the Uttar Pradesh Legislative Assembly on April 24, 1954.

Enacted by the House of the President on June 15, 1954 under Article 101  
of the Constitution of India and was published in the Uttar Pradesh Gazette  
Extraordinary, dated August 19, 1954.

Published in the Uttar Pradesh Gazette Extraordinary, dated August 22,  
1954.





THE ULTER FRANKS (TEMPORARY) ACCOM-  
MODATION REGISTRATION (AMENDMENT)  
ACT 1947<sup>a</sup>

[U. P. Act XV of 1947]

*[Authoritative English Text of the Ulter Franks (Temporary)  
Accommodation Registration (Amendment) Act 1947]*

Act

ACT

*to amend the Ulter Franks (Temporary) Accommodation  
Registration Act 1947*

WHEREAS the U. P. (Temporary) Accommodation  
Registration Act 1947 will expire on September 30 1948 and  
it is expedient to provide for continuance of the said Act until  
September 30 1954

It is hereby enacted in the Fifth Year of our Republic,  
as follows:

1. (1) This Act may be called the Ulter Franks  
(Temporary) Accommodation Registration (Amendment) Act  
1947.

<sup>a</sup> For Enactment of Original and Revised forms see U. P. Govt. Order  
No. 1114 of 1947 dated August 4 1947.

Enacted in Hindi by the Ulter Franks Legislative Assembly on August  
21 1947 and by the Ulter Franks Legislative Council on September 1 1947.

Received for assent of the President on September 15 1947 and is hereby  
assented to by the Governor of India and was published in the Ulter Franks  
Gazette Extraordinary dated September 18 1947.

(Printed in the Ulter Franks Gazette Extraordinary First September  
19 1947)

(3) to shall come into force at once

2. The subsections (g) of section 1 of the U. P. (Temporary) Accommodation Regulations, 1947 are amended from time to time for the figures 2000 the figures 2000 shall be substituted

amendment of  
section 1, of  
U. P. (Temporary)  
Accommodation  
Regulations

THE U. S. ELECTRICITY (TEMPORARY POWERS OF  
CONTROL) (AMENDMENT) ACT 1951<sup>a</sup>

(U. S. Act No. 17) of 1951

[Authentic English Text of the 61st French Edition  
(Temporary Powers of Control) (Amendment) Act]  
1951]

Act  
ACT

U. S. Act No. 17 of 1951 is amended the U. S. Electricity (Temporary Powers of Control)  
Act 1950 for certain purposes.

Whereas it is expedient to amend the U. S. Electricity  
(Temporary Powers of Control) Act 1950 for the purposes  
hereinafter appearing;

It is hereby enacted as follows:

Section 1 is amended to read as follows:  
1. (1) This Act may be called the U. S. Electricity (Elec-  
tricity (Temporary Powers of Control) (Amendment) Act 1951.

(2) It shall come into force as soon

as possible after the date of the passing of this Act.  
(3) In subsection (1) of section 1 of the U. S. Electricity  
(Temporary Powers of Control) Act 1950 for the words "1951"  
the words "1951" shall be substituted.

<sup>a</sup>For documents in English and Spanish, please see U. S. Foreign  
Affairs (Washington) dated April 19 1951.

Passed by the 61st French Legislative Assembly on  
August 15 1951 and by the U. S. Foreign Legislative Council on  
September 1 1951.

Revised by the French Foreign Affairs Ministry on September 15 1951 under  
Article 16 of the Constitution of 1950 and was published in the  
U. S. Foreign Affairs (Washington) dated September 15 1951.

Approved by the U. S. Foreign Affairs Ministry dated  
September 15 1951.



UTTAR PRADESH (TEMPORARY) CONTROL OF RENT  
AND EVICTION (AMENDMENT) ACT 1967

(U. P. Act no. XXVI 1967)

[*Declaration English Text of the Uttar Pradesh (Temporary)  
Control of Rent and Eviction (Amendment) Bill 1967*]

Act

Act

Further to amend the U. P. (Temporary) Control of Rent and  
Eviction Act 1947 for certain purposes

Whereas the U. P. (Temporary) Control of Rent and  
Eviction Act 1947 was continued by the U. P. (Temporary)  
Control of Rent and Eviction (Amendment) Act, 1961 which  
will expire on September 30 1964

U. P. Act 12  
1967

U. P. Act XXVI  
1967

And whereas it is necessary to provide for the amendment  
of the said Act until September 30 1964 and to amend it for  
the purpose hereinafter appearing

*The Enactment of Objects and Reasons of the Uttar Pradesh  
Control (Amendment) Bill 1967*

Passed in Hindi by the Uttar Pradesh Legislative Assembly on  
September 1 1964 and by the Uttar Pradesh Legislative Council on  
September 12 1964

Received the assent of the President on September 20 1964 under  
article 35 of the Constitution of India and was published in the  
Liberation Gazette Extraordinary dated September 21 1964

Enacted in the Uttar Pradesh Gazette Extraordinary, dated  
September 20 1964

It is hereby enacted by the Uttar Pradesh Legislature, as the 14th year of the Republic of India is follows:

1. (1) This Act may be called the Uttar Pradesh (Temporary) Control of Rent and Eviction (Amendment) Act, 1954.

Short title and  
extent

(2) It shall come into force with effect from September 19 1954.

2. In section 1 of the U. P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter called the Principal Act)—

Amendment of  
section 1 of U. P.  
Act 11 of 1947

(1) for subsection (1a) the following shall be substituted

(1a) It shall apply to every municipality and notified area established under the U. P. Municipalities Act 1914 and to areas situated within 2 miles of such municipality or notified area.

U. P. Act 11 of  
1947

Provided however that the State Government is satisfied that it is necessary so to do in the interest of the general public residing in a town area constituted under the Town Areas Act 1914 or in any other area, may by notification in the official Gazette apply the Act or any part thereof to such Town Area or other area.

U. P. Act 2  
of 1954

Provided further that the State Government may likewise

(1) extend or extend any notification issued under the preceding provision or

(2) declare that the Act shall cease to apply to any municipality or notified area or other area as may be specified

and the provisions of section 8 of the U. P. General Clauses Act 1934 shall apply upon such declaration or declaration as of this Act or the parties had been an enactment repealed in the local area concerned by the Uttar Pradesh Act.

U. P. Act 14  
1954

Provided also that nothing in this Act shall apply—

(1) to any person belonging to the State Government or Central Government

(2) to any tenancy or other title relationship created by a grant from the State Government or Central Government or in respect of premises taken on lease or requisitioned by such Government

(3) to any tenancy or other relationship in respect of any plot of land not covered by notified area

(4) in subsection (1a) for the figures 1954 the figures 1954 shall be substituted

Amendment of  
Ordinance 2 of 1977  
Act 101 of 1981

3 In section 2 of the Principal Act—

- (1) for the full stop at the end of clause (c) a comma shall be substituted and thereafter the following shall be added as a fourth para—

For does not include any accommodation used as a factory or for an industrial purpose where the business carried on in or upon the building is also carried out to the street by the same tenant unit

- (2) in clause (c) for the words of the last and second in relation to his sub-tenant the words of such person shall be substituted
- (3) in clause (d) the words and includes any person holding or occupying any accommodation as a sub-tenant shall be deleted
- (4) after clause (g) the following shall be added as a new clause (h)—

(h) means where used with reference to any accommodation includes an accommodation where no full record or statement whatever has been made by the tenant or the landlord to the District Magistrate

Amendment of  
Ordinance 2 of 1977  
Act 101 of 1981

4 In section 3 of the Principal Act—

- (1) for clause (i) of sub-section (1) the following shall be substituted—

(i) that the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the tenant upon him of a notice of demand

- (2) in clause (j) of the said sub-section after the word premises the words as wrong shall be deleted

- (3) after clause (j) of the said sub-section the following shall be added as a new clause (k)—

(k) that the tenant was allowed to occupy the accommodation as a part of his contract of employment under the landlord and his employer has been determined

- (4) for sub-section (2) in (4) the following shall be substituted—

(2) Where any application has been made to the District Magistrate for permission to use a house for purposes other than accommodation and the District Magistrate grants or refuses to grant the permission the party aggrieved by his order may within 30 days from the date on which the order is communicated to him apply to the Commission to review the order

- (3) The Commissioner shall hear the application made under sub-section (2) as far as may be within six weeks from the date of making it and he may, if he is not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate or as to the regularity of proceedings held before him after or reverse his order or make such other order as may be just and proper.
- (4) The order of the Commissioner under sub-section (3) shall subject to any order passed by the State Government under section 2 F be final.

5. For section 2 A of the Principal Act the following shall be substituted:

Amendment of section 2 A of Act 19 of 1947

2 A. (1) The District Magistrate may on the application of a person who has been allowed any accommodation in which sub-section (1) of section 2 of section 2 applies declare that that Magistrate cannot reasonable rent payable therefor.

The District Magistrate may declare on the application of a person who has been allowed any accommodation in of the landlord concerned that reasonable annual rent of the accommodation, to which any of the following provisions of the next clause may be applicable:

- (a) In determining the reasonable annual rent the District Magistrate shall take into account:-

(i) if the accommodation was constructed on or after July 1 1947 the cost of land and the cost of construction, maintenance and repairs thereof as assessed and any other matter which in the opinion of the District Magistrate is material and

- (ii) if it is accommodation falling under sub-clause (2) or para (a) of sub-clause (3) of clause (3) of section 2 the principles therein set forth, and
- (iii) if it is accommodation falling under para (a) of sub-clause (3) of clause (3) of section 2 the principles set forth in clause (a) of sub-clause (3) of section 2.

- (2) Subject to the result of any case filed under sub-section (1) of section 2 the rent declared or determined by the District Magistrate under this section shall be the annual reasonable rent of the accommodation.

6. For section 4 of the Principal Act the following shall be substituted:

Amendment of section 4 of Act 19 of 1947

4. It shall not be lawful for a landlord to take or continue taking any premises or other immovable property of any ten whatsoever and hold thereof the rent payable therefor under the provisions of this Act.



Amendment of  
section 3  
of U. P.  
act III  
of 1941

7 For sub-section (4) of section 3 of the Principal Act the following shall be substituted

(4) If the landlord or the tenant claims that the annual reasonable rate of any accommodation in which the tax applies is inadequate or excessive or has the reasonable annual rent declared by the District Magistrate under section 3-A is not correct, or if the tenant claims that the agreed rate is higher than the annual reasonable rate he may demand a suit for declaration, or as the case may be for fixation of rate in the Court of the Munsif having territorial jurisdiction if the annual rent claimed is payable in Rs 100 or less, and in the Court of the Civil Judge having territorial jurisdiction if it exceeds Rs 100 provided that the Court shall not vary the agreed rate unless it is satisfied that the transaction was unfair, and in the case of lease for a fixed term made before April 1, 1942 that the term has expired.

Amendment of  
section 3-A, U. P.  
act III of 1941

8 After section 3 of the Principal Act the following shall be added in a new section 3-A—

3-A (1) Where the tax referred to in clause (4) of sub-section (1) of section 124 of the U. P. Municipalities Act 1914 has been increased after July 1 1942 or the rate of any accommodation situated and before the said date the landlord may on and from the commencement of the U. P. Council of Rent and Eviction (Amendment) Act 1944 apply notwithstanding anything in this Act or any order made thereunder to the reasonable annual rent payable for the accommodation for the period as aforesaid equal to one-third of the difference between the amount of the tax assessed before July 1942 and the amount assessed after the date. The amount so added to the rate shall be payable by the tenant to the landlord along with the rent.

(2) Where the question arises whether the tax referred to in sub-section (1) has increased in respect of any accommodation it shall be referred to the District Magistrate who shall determine the same.

Amendment of  
section 3-A, U. P.  
act III of 1941

9 In clause (2) of sub-section (1) of section 4 of the Principal Act for the words the rate of construction the words rate of land and the construction shall be substituted.

Amendment of  
section 5 of  
U. P. Act III  
of 1941

10 In section 7-B of the Principal Act—

(1) for the words in respect of rent for more than three months in sub-section (2) the words in respect of rent or any accommodation thereof (where it is payable or receivable) for more than three months shall be inserted.

(3) for the words "serve a prison" in subsection (2) the words "serve the segment past or otherwise a prison" shall be inserted.

(4) both the previous in subsection (3) shall be deleted.

11. For subsection (3) of section 7 E of the Principal Act the following shall be substituted:

Amendment of  
section 7 E. of  
C. P. Act 11  
at (24)

(3) No appeal shall lie from the order of the District Court under subsection (2) and (3) which shall be final.

12. In section 7 F of the Principal Act after the word and figure "section 7" the words "or dividing a prison to secure any accommodation under section 7 A" shall be inserted.

Amendment of  
section 7 F of  
C. P. Act 11  
at (24)

13. For section 8 of the Principal Act the following shall be substituted:

Amendment of  
section 8 of  
C. P. Act 11  
at (24)

(1) Any person who contravenes any of the provisions of this Act or any order made in pursuance thereof shall be punishable on conviction with simple imprisonment for a term which may extend to six months or with fine up to Rs 2,000 or with both.

(2) Where a person has been convicted for contravention of the provisions of section 4 the Magistrate by whom the case is heard may direct that out of the fine if any imposed and realized from the person so convicted an amount not exceeding the amount paid in pursuance of an additional payment order and above the rate for admission as a tenant or any accommodation may be paid to the person by whom such payment was made.

Provided that any amount paid to the person aforesaid under this section shall be taken into account in awarding compensation to such person in any subsequent claim for compensation or rebate sum on account of the amount realized in certain cases of section 4.

(3) Notwithstanding anything contained in section 22 of the Criminal Procedure Code 1973 it shall be lawful for a Magistrate of the First Class trying any case under this Act to pass a sentence of fine not exceeding five thousand rupees.

V of 1980

VITAE FRABESH AGRICULTURAL INCOME TAX  
(AMENDMENT) ACT 1954

[U. P. Act No. 24 of 1954]

(Authoritative English Text of the Uttar Pradesh Kisan Zakat  
(Amendment) Act, 1954)

Act

ACT

U. P. Act No. 24 of 1954 is amended the United Provinces Agricultural Income Tax Act,  
1944 for certain purposes

U. P. Act No. 24 of 1954 Whereas it is expedient to amend the United Provinces  
Agricultural Income Tax Act, 1944 for certain purposes

It is hereby enacted in the fifth year of Our Republic as  
follows—

Short title and commencement. 1. (1) This Act may be called the Uttar Pradesh Agricul-  
tural Income Tax (Amendment) Act, 1954.

(2) This section shall come into force at once, and the  
amending provisions shall come into force with effect from  
July 1, 1954.

\* For Manner of Enactment and Details please see U. P. Gazette (Extraordinary)  
dated May 12, 1954.

Printed at Lucknow by the Uttar Pradesh Legislative Assembly on September 2, 1954 and  
by the Uttar Pradesh Legislative Council on October 12, 1954.

Enacted in the year of the Agrarian on October 1, 1954, under Article 200 of the  
Constitution of India and was published in the Uttar Pradesh Gazette (Extraordinary) dated  
October 1, 1954.

Published in the Uttar Pradesh Gazette (Extraordinary) dated October 4, 1954.

Provided that the assessment (a) the groundward rent ending on or before the 31st day of June 1954, whether such assessment have or have not been made before the assessment year of this Act shall continue to be made in accordance with the law and the schedule of the U. P. Agricultural Income Tax Act 1948 had not been amended by this Act.

2. In clause (1) of section 2 of the U. P. Agricultural Income Tax Act 1948 (hereinafter called the Principal Act) the meaning phrase shall be inserted

Assessment of  
rent of land  
under U. P. A. 1948

3. In section 4 of the Principal Act—

Assessment of  
rent of land  
under U. P. A. 1948

(a) for the word and figure Rs 1000 the word and figure Rs 1000 shall be substituted

(2) substitute the following for the last phrase

Provided that the tax shall not be payable by a person who cultivates not more than 50 acres of land.

Explanation—Land covered by a grove or orchard is land cultivated.

(3) The second phrase shall be inserted

4. (1) In sub-section (1) of section 5 of the Principal Act the following shall be substituted for the meaning phrase

Assessment of  
rent of land  
under U. P. A. 1948

Provided that the groundward income is allowed for tax purposes shall be computed in accordance with clause (2) of sub-section (1)

(2) For the meaning clause (a) of sub-section (1) of the said section the following shall be substituted

(a) Subject to such deductions in respect of agreed and established rights be permitted the income from the land shall be deemed to be an amount equal to or less ascertained by such multiple not exceeding 125 as the Land Revenue Commissioner may fix, and different multiples may be fixed for different districts or periods of time; and for different classes of groves and orchards.

Provided that the Land Revenue Commissioner may deem that the multiple for calculating income from land newly brought under cultivation shall for a specified number of years be such lower figure as may be permitted.

Explanation—In this section, area shall be deemed to be as ascertained in the latest sanctioned map area applicable as boundary extent of the highest class of soil in the village or the rate of orchards and groves and of similar class of soil in other cases.

5. After section 6 of the Principal Act the following shall be inserted as section 6A

Insert as a  
new section 6A  
in U. P. A. 1948  
of land

6A. Notwithstanding anything in section 5 or sub-section (2) of section 6 agricultural income from soil of higher class shall be computed in accordance with clause (2) of sub-section (2) of section 5 after making such further deductions as inances of





UNITED STATES APPROPRIATION (FIRST  
SUPPLEMENTARY 1940-41 ACT, 1941)

(U. S. ACT NO. 300 OF 1941)

(*Authorizes English Title of the First Periodic Payment (1934-35  
to Periodic Payment) Act, 1934*)

AN  
ACT

to authorize payment and appropriation of certain sums from and  
out of the Consolidated Fund of the State in the course of the  
year ending thirty-first day of March 1935

WHEREAS it is expedient to authorize payment and  
appropriation of certain sums from and out of the Consolidated  
Fund of the State in the course of the year ending on the thirty-  
first day of March 1935

Enacted by the Senate and House of Representatives of the United States of America in Congress assembled, September 20, 1941

Passed at Washington by the United States Legislative Committee on Finance  
on 22, 1941 and by the United States Congress on September  
24, 1941

Approved by the President on October 2, 1941 (after Senate  
and House of Representatives of the United States of America in Congress assembled)  
October 4, 1941

(Publication by the United States Government Printing Office, October 4,  
1941)

It is hereby enacted, as the fifth year of the Republic of India as follows:

1. This Act may be called the Uttar Pradesh Appropriation (First Supplement) 1953-54 Act, 1954.

Enactment

2. From out of the Consolidated Fund of Uttar Pradesh there may be paid out, applied from and applied to, those specified in column 2 of the Schedule annexed to this act, and to the sum of Rs 1,26,55,000 (Rupees one crore 26 lakhs 55 thousand and no paise) only towards defraying the several charges which will come in course of payment during the year ending on the thirty-first day of March, 1954 in respect of the services and purposes specified in column 2 of the Schedule.

Sum of Rs 1,26,55,000 only to be paid out of the Consolidated Fund of Uttar Pradesh

3. The sum authorized to be paid and applied from and out of the Consolidated Fund of Uttar Pradesh by this Act shall be appropriated for the services and purposes specified in the Schedule in relation to the year ending on the thirty-first day of March 1955.

Appropriation

# SCHEDULE

Serial No. of Items	Services and purposes	Amount in rupees—		
		Total by the Legislative Assembly	Charged on the Consolidated Fund of the State	Total
1	2	3		
<b>A—Executive Services</b>				
		<b>Rs</b>	<b>Rs</b>	<b>Rs</b>
1	Land Revenue	29,15,000		29,15,000
2	Regular Warranted Post Service	12,15,000		12,15,000
3	Change in Budgetary Expenditure	1,26,55,000		1,26,55,000
4	Change in Method of Granting Subsidies	1,26,55,000		1,26,55,000
5	Post	1,26,55,000		1,26,55,000
6	Police	1,26,55,000		1,26,55,000
7	Prison	1,26,55,000		1,26,55,000
8	Revenue	1,26,55,000		1,26,55,000
9	Mineral	1,26,55,000		1,26,55,000
10	Public Health	1,26,55,000		1,26,55,000
11	Sanitation, Sewerage and Drainage	1,26,55,000		1,26,55,000
12	Scientific Engineering and Construction	1,26,55,000		1,26,55,000
13	Forestry	1,26,55,000		1,26,55,000
14	Change in Method of Granting Subsidies	1,26,55,000		1,26,55,000
15	Education	1,26,55,000		1,26,55,000
16	Labour and Statistics	1,26,55,000		1,26,55,000
17	Administration and Public Works for State Service	1,26,55,000		1,26,55,000
18	Administration of Government Property (Transportation)	1,26,55,000		1,26,55,000
19	Central Board of Secondary Education	1,26,55,000		1,26,55,000
20	Change in Policy, Public Administration	1,26,55,000		1,26,55,000
21	Grant-in-aid of Local Works	1,26,55,000		1,26,55,000
22	Public Health	1,26,55,000		1,26,55,000
23	Mineral Development	1,26,55,000		1,26,55,000
24	Sanitation and Supply of Sewerage and Drainage	1,26,55,000		1,26,55,000
25	Planning and Construction	1,26,55,000		1,26,55,000
<b>Total A</b>		<b>1,26,55,000</b>		<b>1,26,55,000</b>



Item by item	Source and purpose	Voted by the Legislative Assembly	Items not recorded—	
			Charged on the Consolidated Fund of the State	Total
1	2	3		
<b>B—Current Expenditures within the Running Account</b>				
			<b>\$s</b>	<b>\$s</b>
a) Construction of Irrigation Works inside the Province-Andalus			4 000 000	4 000 000
b) Order in Civil Works inside the Province Account			000	000
c) Expenditure on Electricity Interest			000	000
<b>Total B</b>			<b>4 000 000</b>	<b>4 000 000</b>
<b>C—Disbursement of Loans with Advances</b>				
			<b>\$s</b>	<b>\$s</b>
D Loans and Advances Money Interest			40 000 000	40 000 000
<b>Total C</b>			<b>40 000 000</b>	<b>40 000 000</b>
<b>Grand Total</b>			<b>1 20 000 000</b>	<b>1 20 000 000</b>



THE UTAH FRANCHISE LAND REFORM  
(AMENDMENT) ACT 1934

(U. P. Act No. 14, of 1934)

[AN ACT TO AMEND THE UTAH FRANCHISE ACT OF THE UTAH FRANCHISE]  
Enacted by the Legislature of the State of Utah  
1934\*\*

As  
Amended

U. P. Act 1 of 1934. To amend the U. P. American Abolition and Land Rights Act, 1934, and other laws relating to land issues.

U. P. Act 1 of 1934. Whereas it is expedient to amend the U. P. American Abolition and Land Rights Act, 1934, and other laws relating to land issues for the purpose to render appearing

It is hereby enacted as follows:

Section 1. (1) This Act may be called the Utah Franchise Land Reform (Amendment) Act 1934.

(2) It is enacted to the effect, of these Franchise laws, except the laws which on the 1st day of July 1934 were included in a, municipality or a county and under the provisions of the U. P. Municipalities Act 1934, or a municipality under the provisions of the Counties Act 1934, or a county area under the provisions of the U. P. Town Areas Act 1934.

\*The provisions of Chapter and Section of the U. P. Chapter (Utah) Act, 1934, dated May 11, 1934.

Enacted in the Utah Franchise Legislative Assembly on September 20, 1934, and by the Utah Franchise Legislative Council on September 20, 1934. Enacted in the Senate on October 1, 1934, under Article 20 of the Constitution of the State of Utah, and was published in the U. P. Franchise Legislative Act, dated January 10, 1934.

\*\*Enacted in the Utah Franchise Legislative Act, dated October 17, 1934.

Provided that in an application to the court specified in section 2 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act (1948) (hereinafter called the Principal Act) the provisions of this Act shall have effect subject to such exceptions or modifications not affecting the substance as the State Government may by notification in the official Gazette specify in the behalf.

(2) It shall come into force in such respects as the State specified in section 2 of the Principal Act where it shall subject to any exceptions or modifications made under sub-section (2) come into force on such date as the State Government may by notification published in the official Gazette appoint and different dates may be appointed for different areas.

2. In such section, (1) of section 2 of the Principal Act—

(a) sub-clause (iv) of clause (v) shall be deleted; and

(b) after clause (v) the following g. shall be added as a new clause (vi)—

(vi) any area which on the 15th day of January 1950 was included in an estate as defined in the Provisions and Limits (Abolition) of the clause) Order 1949 attached to Uttar Pradesh Order 364 and Order 37

Amendment of  
Sec. 2 of U.P. Z.A. & L.R. Act 1948

3. In section 2 of the Principal Act—

(a) after clause (22) the following shall be added as a new clause (22A)—

(22A) temporary educational institutions, situated in educational institutions in a class of areas were declared as such by the State Government by notification in the official Gazette

(b) in clause (23) for the following is the end a new clause shall be substituted and thereafter the word and shall be inserted; and

(c) after clause (24) the following shall be added as a new clause (25)—

(25) any reference in Part I or clause 2 of rights shall include reference to any in primary or general rights proposed under section 25 of the U. P. Land Reforms Act 1948

U. P. No.  
18 of 1949

4. (1) In section 10 of the Principal Act—

(a) for the words every person who on the date immediately preceding the date of coming—

(b) was or has been deemed to be in accordance with the provisions of this Act—

Amendment of  
Section 10 of  
U. P. Act 1948

the following shall be substituted—

every person who—

(a) on the date immediately preceding the date of coming was or has been deemed to be in accordance with the provisions of this Act —

(b) in sub-clause (a) of clause (c) for the words clause (b) of sub-clause (b) the words sub-clause (a) of clause (b) shall be substituted.

- (c) in sub-clause (a) of clause (a) for the words "clause (c) of subsection (b) the words "sub-clause (a) of clause (b) shall be substituted
- (d) in sub-clause (a) of clause (b) for the words "the figure 10" shall be substituted
- (e) in sub-clause (a) of clause (c) for the words "sected of rights for the year 1924" shall be substituted under clause (a) of section 11 of the Waste Lands or Charities of 1914 shall be substituted under sections 20 and 21 respectively of shall be substituted and
- (f) after explanation II the following shall be added as explanation III and IV:-

*Explanation III*—For the purposes of explanation II an entry shall be deemed to have been corrected before the date of coming of an order in favour of a mortgagee, cover respecting any mortgage in records had been made before the said date and had become final even though the order may not have been incorporated in the records.

*Explanation IV*—For purposes of this section mortgage in respect any land does not include a person who was included in an entry made in the list or any other clause in the year 1924.

- (2) A person recorded as mortgagee in 1924 shall of land referred to in the proviso to subsection (3) of section 17 of the U. P. Tenancy (Amendment) Act, 1947 shall not become an addressee of such land under this clause (a) of clause (b) of section 10 of the Principal Act and accordingly in the said sub-clause for the words "must then prove land or land to which section 18 applies" there shall be substituted the words "where that person held or had or which section 18 applies or land referred to in the proviso to subsection (3) of section 17 of the U. P. Tenancy (Amendment) Act, 1947" and the amendments in words shall be deemed to have had effect from the date of commencement of the Principal Act.

#### 5. In section 21 of the Principal Act:-

- (a) in clause (a) in subsection (1) for the words "a mortgagee the words "a mortgagee or actual possessor shall be substituted
- (b) for clause (b) of subsection (3) the following shall and be deemed to have been substituted with effect from the date of commencement of the Principal Act:-
- (b) a tenant of land or land referred to in sub-clause (a) of clause (a) of the explanation under section 18 a sub-clause referred to in sub-clause (a) of clause (b) of section 10 or an assignee

Amendment  
Bills, 20  
U. P. Act 1  
1/1

referred to in subsection (c) of clause (b) of the said section where the landholder or all of them are dead then also landholder all of them were persons or persons belonging:-

(a) if the land was for use or occupied prior to the death day of April, 1949, both on the date of letting or occupation or, the same may be used on the death day of April 1949, and

(b) if the land was for use or occupied after the death day of April 1949 on the date of letting or occupation.

to use, use or part of the clause mentioned in subsection (1) of section 157

(2) After clause (b) in section (1) the following shall be inserted as a new clause (b):-

(b) a house building under a lease from a tenant under subsection (7) of section 155 of the U. P. Tenancy Act 1939

(3) in subsection (2) the following shall be inserted after the word "thereof" -

as an estate from year to year

4. Clause (b) of subsection (2) of section 23 of the Principal Act shall be deleted.

5. After Chapter II of the Principal Act the following shall be inserted as new Chapter IIIA:-

#### Chapter IIIA-Immune Property

Section.

13A. In this Chapter and Schedule V, unless there is anything repugnant to the subject or context, the words and expressions "Immune", "Immune and Immune Property" shall have the meaning assigned to them in the Administration of Immune Property Act 1956

13B. The provisions of this Act in their application to immune property shall have effect subject to the modifications set out in Schedule V

6. After section 56 of the Principal Act the following shall be inserted as a new section 56A:-

Power to appoint officers to Court Judge

56A. (1) A District Judge may nominate or any Court Judge under his administration may be called upon to appoint under section 56 from the order of the Commissioner of the District Judge

(2) Appeals transferred under this section shall be the point of an instance with the provisions of the law to be applied to appeals by the District Judge under section 56

Amendment of Section 23 of U. P. Act 1 of 1949  
Amendment of new Chapter IIIA in U. P. Act 1 of 1956  
13A

Amendment of a new Chapter IIIA in U. P. Act 1 of 1956

Agreement of  
Section 11  
of P. Act 1  
1954

9. In section 85 of the Principal Act between the words "between 86 and 88" the words "or of a Court Judge passed in due order of A" as the case may be shall be inserted.

Insertion of a  
new Section 87 A  
in P. Act 1 of  
1954

10. After section 87 of the Principal Act the following shall be inserted as new section 87 A:-

Section 87A  
(1) (a) A District Judge may cause  
to be any Court Judge who for sufficient  
reasons cannot say appears under section  
87 from the order of the Commissioner  
Officer pending before him.

(b) Appraiser's statement under this section shall be the  
basis of an assessment with the procedure apply-  
able to disposal of appeals by the District Judge  
under section 87.

Amendment of  
Section 87  
of P. Act 1  
1954

11. In section 86 of the Principal Act between the words "between 87 and 88" the words "or of a Court Judge passed under section 87 A" as the case may be shall be inserted.

Amendment  
Section 88 of P.  
Act 1 of 1954

12. In subsection (2) of section 86 of the Principal Act the words "relevant extracts from the record of rights and" shall be deleted.

Amendment of  
Section 117  
of P. Act 1  
1954

13. In section 117 of the Principal Act:-

- (a) item (iv) shall be deleted.
- (b) in item (v) between the figure and word "and" apply the words and figures to any land referred to in section 8 shall be inserted; and
- (c) in the second proviso the following shall be substituted:

Provided further that the State Government may at any time having regard or caused the most figures made under this subsection on request of any land or thing situated whether generally or in the case of any Government land and income with land or thing and whenever the State Government so requires the land or thing the State Government shall be entitled to receive and be paid compensation on account of the develop-  
ment of any affected by it or on or over the land or thing.

Amendment of  
Section 117 A  
of P. Act 1  
1954

14. In section 117 A of the Principal Act after subsection (1) the following shall be inserted as a new subsection (2):-

- (2) The provisions of the first and second provisos to section 117 shall mutatis mutandis apply to compensation of land and other things valued as a land category under subsection (1).

Amendment of  
Section 118  
of P. Act 1  
1954

15. In section 118 of the Principal Act:-

- (a) in subsection (3) between the words "and well contents and the word" management  
shall be inserted and the words "public well" shall be deleted; and

(c) in clause (b) of subsection (2) the word "will" shall be deleted.

14. In section 118 of the Principal Act between the words "superintendent" and "and" insert and the word "preserves" shall be inserted.

Amendment of  
Section 118 of  
O. S. Act I of  
1941

17. After section 123 of the Principal Act the following shall be added as a new section 123 A:-

Insertion of a new  
Section 123A in  
O. S. Act I of  
1941

Penalty for  
making  
false  
entry in  
map  
of  
land, in papers  
of the  
Panchayat

123 A. (1) Every member of the Gram Panchayat who puts information or any other statement conveyed under this Act shall be liable for the loss, waste or misapplication of any property vested in the Gram Sabha under this Act if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while a member of the Gram Panchayat from Government or other employees and a suit for compensation may be instituted against him by a holder of the Gram Sabha seeking redress the matter to the previous sanction of the Government authority or by the Gram Panchayat or by the Committee established under section 124.

(2) If the prescribed authority sanctions the institution of a suit under sub-section (1), or refuses or grants its sanction, the member aggrieved may, within 60 days of such sanction or refusal, appeal to the State Government or an appellate prescribed authority against the such sanction or refusal.

(3) The State Government may sanction a suit maintained as sub-section (1) on its own initiative.

18. After section 127 of the Principal Act the following shall be added as a new section 127 A:-

Insertion of a  
new Section 127 A  
in O. S. Act I of  
1941

Penalty and  
remedy of  
damages  
in case of  
loss or  
destruction  
of documents  
under section 127

127 A. The State Government may for reasons to be recorded in writing exempt any member or Chairman of the Committee established under section 124 or the member presiding.

19. In subsection (2) of section 128 of the Principal Act-

Amendment of  
Section 128 of  
O. S. Act I of  
1941

(1) after clause (a) the following shall be added as a new clause (a1)-

(a1) the manner in which and the authority by which compensation is to be paid under the word "payable" in section 127 shall be inserted and paid.

(2) after clause (b) the following shall be added as a new clause (b1)-

(b1) the statutory provision for determination of damages in such circumstances upon land and things vested in the Gram Sabha, removal of encroachments and assessment and payment of compensation for the damage.



amendment of  
 clause 124 of  
 U. P. Act I of  
 1941

20. In sub-section (1) of section 124 of the Principal Act the existing Explanation shall be cancelled and Explanation 2—  
 21—

*Explanation 2—For the purpose of this section the rent payable by a tenant on the date immediately preceding the date of seizure shall—*

- (a) in respect of land referred to in the proviso to clause (a) of sub-section (1) of section 124 be an amount agreed or after all the measures have been taken taken to land
- (b) in respect of land to which the proviso to section 124 applies be an amount determined, in accordance with rules made in this behalf.

Amendment of  
 section 124 of  
 U. P. Act I of  
 1941

21. In section 124 of the Principal Act after the existing proviso the following shall be added as a second proviso—  
 Provided further that in the case referred to in Explanation 11 of section 124 the order shall during the period a reduced amount is payable in accordance with section 124 or 125 be liable for payment of one-half of the amount payable from date to date.

Amendment of  
 clause 125 of  
 U. P. Act I of  
 1941

22. In section 125 of the Principal Act—  
 (a) for words and figure clause (b) of section 125 words and figure clause (b) or (c) of section 121 shall be substituted and

(c) the first proviso shall be deleted.

Amendment of a new  
 clause 140A of  
 U. P. Act I of  
 1941

23. After section 140 of the Principal Act the following shall be inserted as a new section 140A—

Section of  
 new clause 140A  
 of U. P. Act I of  
 1941

140A. Where a tenant has deposited his rent under the rent payable for the land by the landlord in accordance with the provisions of sub-section (2) of section 124 of the U. P. Agricultural Tenants (Assessment of Privileges) Act, 1949 and a declaration has been given to him under section 4 of the said Act, the said tenant shall, on the application of the person who was his landlord on the date of application for deposit under sub-section (2) of section 124, either pay or have the amount equal to one-third of the amount so deposited.

Amendment of  
 clause 141 of  
 U. P. Act I of  
 1941

24. In existing section 141 of the Principal Act, the following shall be substituted—

Section of a  
 new clause 141  
 of U. P. Act I of  
 1941

141. (a) Except as expressly provided by this Act the transfer of a land and its interest shall not be enforceable.

(2) A land may transfer by gift land as a religious educational institution for a purpose connected with agriculture or agriculture horticulture or animal husbandry.

25. In section 164 of the Principal Act between the words "land" and the words "other than its produce" shall be inserted

Amendment of  
Section 164 of  
the P. Act 1 of  
1921

26. For subsection (1) of section 165 of the Principal Act the following shall be substituted—

Amendment of  
Section 165 of  
the P. Act 1 of  
1921

(1) No bloodthirsty order or award shall, for any period whatever, be or be deemed to be binding except—

- (a) in the case provided for in section 153; or
- (2) in a recognized international settlement for a purpose connected with international or special law, international or general kinship.

27. In subsection (2) of section 167 of the Principal Act—  
(1) for clause (a) and (b) the following shall be substituted

Amendment of  
Section 167 of  
the P. Act 1 of  
1921

- (a) an intestate widow or a divorced divorced or separated from her husband or widow husband widow from any of the dependents mentioned in clause (c) or (d) or a widow;
- (2) a widow whose father widow from any of the dependents mentioned in clause (c) or (d) or has died; and

(2) for clause (c) the following shall be substituted—

- (a) possessing widow as a recognized settlement and does not exceed 25 years in age and whose father widow from any of the dependents mentioned in clause (c) or (d) or has died.

28. In subsection (2) of section 168 of the Principal Act for the words "widow, mother, step-mother, father's father, father's mother, step-mother, daughter or intestate son" the words "widow, widow of a male blood descendant in the male line of descent, mother, daughter, father, mother and daughter, son or half son being the daughter of the same father as the deceased" shall be substituted.

Amendment of  
Section 168 of  
the P. Act 1 of 1921

29. For the meaning section 171 of the Principal Act the following shall be substituted

Amendment of  
Section 171 of  
the P. Act 1 of 1921

(1) Subject to the provisions of section 169 when a bloodthirsty order or award being a male then his interest in his holding shall devolve in accordance with the order of succession given below

(a) male blood descendants in the male line of descent

Provided that the son of a predeceased male has no interest shall (inherit) the share which would have devolved upon the deceased if he had been then alive.

(2) widow

(3) widow of a male blood descendant in the male line of descent who has not remarried

- (d) father
- (e) mother who has not remarried
- (f) brother being the son of the same father as the deceased
- (g) brother
- (h) brother's son
- (i) brother's son, the brother having been son of the same father as the deceased
- (j) father's father
- (k) father's mother who has not remarried
- (l) son's daughter
- (m) sister
- (n) half-sister being the daughter of the same father as the deceased
- (o) sister's son
- (p) brother's son's son
- (q) father's father's son
- (r) father's father's son's son

26. In section 172 of the Principal Act—

(2) for sub-section (1) the following shall be substituted—

- (1) When a claimant under or agent who has taken the oath of fealty submitted an answer in any holding—
- (a) as a widow, widow of a male tenant dependent on the male line of descent, mother or father's mother then survives, daughter or son-in-law such holding or part thereof or—
- (b) as a daughter, son's daughter, sister or half-sister being the daughter of the same father as the deceased then survives or succeeds such holding or part thereof

the holding or the part shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of section 177) of the last male claimant under or agent

(2) in sub-section (2)—

- (a) for the words "widow mother step-mother father's mother daughter sister or step-sister" the words "widow widow of a male tenant descending in the male line of descent, mother daughter father's mother, son's daughter sister or half-sister being the daughter of the same father as the deceased" shall be substituted

(b) for clause (d) the following shall be substituted—

(d) any children or succession and in the case of a widow, widow of a male tenant who resides in the male line of descent neither father's neither mother's estate shall be taken in order on the day when death, before the said date laid the hold, say otherwise than in an intestacy, or estate, referred to in clause (a) the hold, say shall devolve upon the nearest surviving issue (such line being ascertained in accordance with the provisions of section 171) of the last male tenant.

31. After section 172 of the Principal Act the following shall be added in new section 172A:

Section 172A of the Principal Act shall be amended as follows—

172A. Where a male or female who has inherited any interest in any holding as a widow, widow of a male tenant, descendant in the male line of descent, mother, daughter, father's mother, son's daughter, son or daughter being the daughter of the same father as the deceased, acquires the right of a life-tenant in such land under sections 156 or 158 the right so acquired shall for the purposes of distribution under sections 172 be deemed to be subject to the holding of the last male tenant thereof.

32. Section 173 of the Principal Act shall be deleted.

Section 173 of the Principal Act shall be deleted.

33. The subsection (1) of section 178 of the Principal Act the following shall be substituted:

Section 178 of the Principal Act shall be amended as follows—

(1) Except as provided in sub-section (2) whenever in a suit for partition a court finds that the upper part sets off the holding or holdings to be partitioned then no matter where and on which side the court shall instead of proceeding to divide the holding or holdings direct the sale of same and distribution of proceeds thereof in accordance with such principles as may be prescribed.

34. After section 182 of the Principal Act the following shall be added in new sections 182A and 182B:

Sections 182A and 182B of the Principal Act shall be added as follows—

182A. The provisions of sections 34 and Order XX, Rule 18 Code of Civil Procedure, 1908 shall apply to a suit for partition of a holding under section 178.

182B. Except as provided in section 178 or 182 the partition of a holding or the separation of the share therein of a life-tenant or issue shall be made by the Court in accordance with the principles that may be prescribed.

Section 171 of the Principal Act shall be added as a new section 180 A—

180 A (1) When the Collector has reason to believe upon information or otherwise that any land the area referred exceeds twelve and a half acres or such higher limit as may be prescribed, the any tenant included in the holding of a landlord or owner has not been used for those mentioned uses, immediately proceeding for a purpose connected with agriculture, horticulture or animal husbandry which includes procedures and poultry farming the day, within a declaration under section 144 has been obtained in respect thereof, replace the landlord or owner thereof to show either why the land has not or not for purposes of agriculture or any other.

(2) The owner under subsection (1) shall state the grounds for believing that the land has not been used as referred to above the period for which it is proposed to be used, out to its area and such particulars as may as be required for necessary for the information of the landlord or owner concerned.

(3) If the landlord or the owner appears and satisfies the Collector—

(a) that the land was used for a purpose connected with agriculture, horticulture or animal husbandry which includes procedures and poultry farming within the period mentioned in subsection (1)

(b) that he has sufficient area for use as referred to in

(c) then he shall within six months next following the date of service of the notice mentioned in subsection (1) use the land for a purpose connected with agriculture, horticulture or animal husbandry which includes procedures and poultry farming or obtain a declaration under section 144.

He shall at once commence in clause (a) and (b) discharge the notice forthwith and in case of (a) provide the order in a date six months after the first of service of such notice.

(4) On the date fixed under sub-section (3) or any other date on which the order may be taken up the Collector shall if the land has been used for a purpose as aforesaid discharge the notice or, in any case where it is recorded he allows further time for use the land as mentioned in the notice and upon terms to be prescribed and all the provisions

of the Act relating to an estate belonging to the class mentioned in clause (b) of section 133 shall apply to such estate as if he had been admitted to the land by the Member or order personally.

- (3) If the Member or order does not appear to apply to the estate under sub-section (2) and the Collector or any other such higher officer, as he may see fit, is necessary satisfied that the Member or order has failed to use the land as abutment during the period referred to in sub-section (2), he shall unless he desires to discharge the estate, use the land as an estate, in the manner and upon terms to be prescribed and all the provisions of this Act relating to an estate belonging to the class mentioned in clause (3) of section 133 shall apply to such estate as if he had been admitted to the land by the Member or order personally.
- (4) It shall be lawful for the Collector instead of him or if leaving out the land to direct the Land Management Commission to do so.
- (5) An appeal against the action of the Collector under sub-section (4) or (5) during the land as he is to an estate shall lie to the Commissioner.

(4) In section 136 of the Principal Act—

(1) in sub-section (1)—

- (a) the word and figure "137" shall be deleted,  
(b) before clause (c) the following shall be added in a new clause (c) a)–

(c-a) a recognized Educational Institution for a purpose connected with agriculture, an agricultural horticulture or animal husbandry;

(2) in sub-section (2) the following shall be added in an Explanation—

Explanation—A person shall be deemed to be a landless agricultural labourer if he holds land not exceeding such maximum as may be prescribed in that behalf by the State Government order generally or for any particular area.

(3) In sub-section (3) the following shall be substituted:

(3) The Sub-Principal Officer may on his own motion and shall on the application of any person approved by an order of the Class Officer, proceed under sub-section (1) in respect of the manner prescribed, and in accordance with sub-section (2) and if he is satisfied that the Class Officer has acted with reasonable expediency in admitting them in accordance with the provisions of this Act, he may pass orders with orders to be made by

Amendment of  
Section 136 of  
the P. Act 1954



- (4) Where the person does not appear in person at the notice under subsection (3) or if he appears but does not satisfy the notice the Collector may make an order for his ejection from the land.
- (5) If the person appears, in person at the notice under subsection (3) and files any objection the Collector shall proceed to hear the applicant and the objection and the evidence which they may submit.
- (6) Whenever the Collector is satisfied that the person has obtained or is acting as a tenant holder or joint holder of land referred to in section 217 or being an immediately brought work land under his own cultivation or planted a grove there on or on after the eighth day of August 1948 he shall pass an order for ejection of the person from the land on payment of such compensation as may be prescribed.
- (7) Where an order for ejection has been passed under this section the person against whom the order has been passed may institute a suit or application for relief claimed by it but subject to the result of such suit the order passed under subsection (6) or (8) shall be conclusive.

**Section 217B** (1) An owner ejected from or prevented from obtaining possession of any land forming part of his holding otherwise than in accordance with the provisions of the law for the time being in force by—

- (a) the landholder or any person claiming as landholder to have a right to such land; or
- (b) any person authorized or authorized to enter possession of the land by such landholder or person claiming as an authorized agent of other person may sue the person or persons from or keeping him out of possession,
- (c) for possession of the land; and
- (d) for compensation for wrongful dispossession.

Provided that no decree for possession shall be passed where the plaintiff is the tenant of the plaintiff of the decree is liable to ejection in accordance with the provisions of this Act within the current agricultural year.

- (2) Where a decree is passed for possession for wrongful dispossession but not for possession the cost of the proceedings shall be for the whole period during which the decree was withheld to remain in possession.
- (3) An owner who has lost for possession only shall not be entitled to recover a separate suit for compensation for wrongful dispossession.



*Explanation*—For purposes of this section land does not include any area for the use being used for a purpose other than agriculture.

Landholder means (1) C. 125. When an owner takes title, (2) (3) of subsection (1) of section 125 B, any person entitled or allowed to occupy possession, the landholder or the person claiming a landholder of such person shall be understood as a claimant.

Amendment of (1) In subsection (3) of section 125 of the Principal Act for the words "is limited and therefore, and divided portions of the boundary rules applicable to the land, the words, so that the person calculated as boundary rules applicable to the land, shall be substituted.

Amendment of (2) For subsection (3) of section 125 of the Principal Act, the following shall be substituted:

(4) If the owner has been duly paid, the owner shall subject to the provisions of section 125, provided to him, and make the application as if it were a case for recovery of money of him.

Amendment of (3) In section 125 of the Principal Act for the word "shall" the words "must" shall be substituted.

Amendment of (4) After section 125 of the Principal Act the following shall be added as new sections 125 A—125 D:

125 A. When any person against whom a decree or order of execution from a court or any person directed has been executed under the provisions of the Act or the U. P. Tenancy Act, 1948, remains in possession or re-enters otherwise than under an arrangement with the provisions of law upon such holding he shall be presumed to have done so with the intent to obstruct or annoy the person in possession within the meaning of section 448 of the Indian Penal Code.

125 B. (1) Any person claiming to be an owner either wholly or jointly with any other such person may sue the landholder for a declaration that he is an owner or for a declaration of his share in joint estate in the holding in the case may be.

(2) In any suit under this section any person claiming to hold an estate through the landholder shall be joined as a party.

125 C. A Court Order or a Khattas or order of any land may not any person claiming to be an owner of such land, for a declaration of the rights of such person.

That the holder of an estate of a person claiming to be an owner.

**Provision for a reserve.** 122 D. If in the course of a suit under the provisions of sections 122 B and 122 C it is proved by an affidavit or otherwise—

- (a) that any property, trees, or crops standing on the land is exposed or is danger of being wasted, damaged or destroyed by any pump or the suit, or
- (b) that any party to the suit threatens or intends to interfere or dispose of the said property, trees or crops in order to defeat the ends of justice, the Court may grant a temporary injunction and where necessary also appoint a receiver.

123 In sub-section (2) of section 122 of the Principal Act the following shall be inserted as sub-sections (gg) and (ggg): Amendment of Section 122 of U. P. Act I of 1911

(gg) the valuation of the holding and the nature of equipment of the persons to be allowed to such party and its valuation thereof under section 122 B

(ggg) The making of objections and the procedure to be followed in the hearing and disposal of objections under section 122 B

124 In sub-section (1) of section 121 of the Principal Act for the words and figures, sections 120, 124 and 127 the words and figures, sections 122 and 124, shall be substituted: Amendment of Section 121 of U. P. Act I of 1911

125 In section 122 of the Principal Act—

(1) In sub-section (1) for the words, "upon receipt of the writs, they must" shall be substituted, "and"

Amendment of Section 122 of U. P. Act I of 1911

(2) After sub-section (4) the following shall be inserted as new sub-sections (5) and (6):

(5) Where any improvements as defined in the U. P. Tenancy Act 1939, was lawfully made before the date of coming by any person on the land and such person is dispossessed from such land under sub-section (2) the Assistant Collector shall, on the date of making the order under sub-section (7) direct compensation to be paid to such person for such improvements and the amount of compensation shall be determined as far as may be in the manner and in accordance with the principles laid down in that behalf in Chapter V of the U. P. Tenancy Act, 1939.

(6) The order for possession under sub-section (7) shall be conditional on the payment by the addressee within such time as the Assistant Collector may fix for the payment of compensation to be paid under sub-section (5).

Section 131 A, 13 shall be added as a new section 131 A.

**1111** Right of an owner to sue for damages under section 20. **1112** The provisions of sections 206 shall continue to apply to an addressee as of the date an account

(c) In section 100 of the Principal Act (for the words "as respects appeal to and limited" and thereby those and amended provisions) of all the rates computed as secondary rates applicable to the land the words "as respects appeal to and limited" are removed which shall not be less than 10 1/2 per centum and 100% than 100 per centum of all the rates computed as secondary rates applicable to the land shall be substituted.

10 In section 222 A. of the Principal Act for the words  
 "the cost of the land" shall mean the cost not exceeding \$10,000  
 per acre of the land cultivated at ordinary rates; the words  
 "the cost of the work" having regard to the manner in which the  
 15 50 all amounts of the ordinary cost of the work shall not be less than  
 100 per cent. and the cost shall not be less than 100 per cent. of the cost of  
 the work shall be calculated.

Section 274 of the Principal Act the words "without prejudice to the provisions of section 277" shall be deleted.

after section 234 of the Principal Act the following shall be inserted as a new section 234-A—

294-4 The procedure of section 292.3 292.6 and 292.8 in 292.2 shall apply to an addition to a lot where an

407. Paragraph 207 of the Document has shall be deleted

13 Section 227 of the Principal Act shall be deleted.

14 In subsection (2) of section 140 of the Principal Act, the words "in the case of a person" shall be deleted.

Act Chapter 12 to (d) shall be deleted

## CHAPTER 13

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10) A. (E) As soon as may be after the commencement of the U. P. Land Reforms (Amendment) Act 1964 the State Government may, by notification, published in the official Gazette, declare that as from a date to be specified therein, the rights, title and interest of the land holder in the land which on the date immediately preceding the said date was held as deemed to be held by an addressee shall as from the beginning of the date so specified hereinafter called the appointed day shall cease and vest, except as hereinafter provided, in the State free from all encumbrances.

- (7) It shall be treated for the, in the, circumstances, if it is considered necessary to make known that to avoid the restrictions referred to in subsection (5) in respect only of such sums as may be paid for shares held and all the payments of sub-section (1) shall be applicable in and as the case of other such sums known.

1988. Where a restriction under the Companies Act 1948, has been published in the official Gazette then notwithstanding any thing contained in Chapter II and 1A of this Act but with a reference provided the following consequences shall arise in the case to which the restriction refers, namely:-

- (a) every person who on the date immediately preceding the appointed date is or has been deemed to be an offeree (and with effect from the appointed date becomes holder of the fund referred to in section 198 A and held by him as such and shall have all the rights and be subject to all the liabilities conferred and imposed upon him by or under this Act;
- (b) (i) all sums payable by the offeree in respect of the fund referred to in section 198 A the appointed date, the appointed date which has the consequence of rights, title and interest of the fund holder thereon under the said statute shall be payable to the fund holder; all sums not to be payable to the holder of instruments and not to the fund holder and persons not to receive within of the statute shall not be valid discharge of the person liable to pay the same;
- (ii) where under an agreement or contract made before the appointed date or, case for any period after the date has been paid to or compounded or released by the fund holder the same shall notwithstanding the agreement or the contract be recoverable by the fund Government from the fund holder and any without prejudice to any other mode of recovery, be treated by debiting the amount from the company, and sums payable to such fund holder under section 274;
- (c) all sums of interest in respect of the fund referred to in section 198 A and due from the fund holder for any period prior to the appointed date shall continue to be recoverable from such fund holder;
- (d) the rights, title and interest of the fund holder as required in the fund shall not be liable to attachment or sale or execution of any decree or

other papers of any court, civil or criminal, and any attachment relating to the appointed date or day, unless the attachment period before such date shall expire on the previous of section 15 of the Transfer of Property Act, 1902, shall be in force.

- (g) no claim or liability, enforceable or unenforced before the appointed date by or against the landholder for any money, which is charged on or secured by a mortgage on the land referred to in section 180 A shall merge as provided in section 15 of the Transfer of Property Act, 1902, be enforceable against such land or the addressee who becomes a creditor under clause (a).
- (h) nothing contained in this chapter shall in any way affect the rights of any person:-
- to demand to work any mines comprised in any land referred to in section 180 A, which shall be governed by law for the time being in force; and
  - to recover any amount of rent or other dues which accrued before the appointed date and the same land notwithstanding any debt contained in this Act, be mortgageable as provided for the purpose created there in and
- (i) all suits and proceedings of the nature to be executed pending on any event on the appointed date and all proceedings upon any claims or debts made in the such suit or proceeding previous to the appointed date shall be stayed.

Provided that no decree for an amount of rent or other for arrears in default of an order of rent shall be executed by execution of the judgment-debtor from his holding.

**Landholder and 180F. Effect of landholder's rights.**  
 180F. (1) While no orders on the land referred to in section 180 A are issued under the said section shall be executed in nature and be paid compensation as hereinafter provided.

**Compensation 180G. For property of allotments and**  
**180G(1).** payments of compensation for acquisition of rights title and interest of the landholder in the land referred to in section 180 A the Competent Officer shall prepare a compensation sheet containing:-

- the name or names of the landholder
- when the land referred to in section 180 A was on the date immediately preceding the date of vesting

- (a) recorded as an *ikushiki* or fixed rate tenancy of the land holder or
- (a) included in the holding of a person being any or any of the classes mentioned in clause (2) of section 18 or
- (a) included in the holding of a person being any or any of the classes mentioned in section 19

the rent computed at customary rates applicable on the said day

- (a) when the land referred to in section 18-B, was held other than land mentioned in clause (2) the rent payable for such land for the tenancy entered on the said day and
- (a) such other particulars as may be prescribed

190 E The amount payable as compensation to the holder of the land referred to in section 18-B shall—

- (1) where such land holder or his predecessor as tenant was a *thakudhar* referred to in clause (a) of sub-section (1) of section 18 be—

(a) an amount equal to, or more than the rent referred to in clause (3) of section 18-B plus

(b) the compensation and the rehabilitation grant if any payable to him as an occupier with the provisions of Chapters III to V

- (2) where such land holder was on the date immediately preceding the date of vesting a fixed rate tenant or a person referred to in sub-clause (a) of clause (3) of section 18-B, an amount equal to twice more the rent referred to in clause (3) of the said section.

- (3) where such land holder was on the date immediately preceding the appointed day, a *thakudhar* other than a *thakudhar* referred to in clauses (1) and (2), an amount equal to—

(a) ten times the rent referred to in clause (3) of section 18-B and

(b) ten times the rent referred to in clause (3) of the said section

- (4) where such land holder or his predecessor as tenant was on the date immediately preceding the appointed day a person referred to in sub-clause (a) of clause (3) of section 18-B, an amount equal to, or more than the rent referred to in clause (3) of section 18-B

Preceded always then when the amount to be paid under sub-~~cl~~ause (a) of clause (b) or clause (c) is less than the amount equal to five times the rent payable for each land by the amount claimed on the day immediately preceding the date of making the amount to be paid shall be equal to five times the said rent.

**Interpretation** ~~of section~~ 248F The Compensation, ~~Statement~~ prepared under section 248D shall be exhibited in the manner prescribed, and a copy thereof shall also be sent to the landholder concerned.

**Time of issue** 248G Any person interested in the land described in before the Compensation Officer in objection upon such statement within the period of one month from the date of its publication.

**Disposal of objections** 248H (1) Every objection as submitted in accordance (2) the Compensation Officer shall after hearing the parties if necessary, on the objections filed under section 248G dispose of the objections in the manner prescribed.

(2) Where the objection filed under sub-section (1)-

(a) is that the land is not land referred to in sub-section (1) of section 248A, the Compensation Officer shall issue an order to that effect and refer it for disposal to the Court which would have jurisdiction to decide a case under section 22B read with section 22-A in respect of the land and determine all the persons relating to the hearing and disposal of such case that apply to the reference as if it were such.

(b) involves a question of title and such question has not already been determined by a competent Court the Compensation Officer shall refer the question for determination to the District Judge.

**Explanation**-Whether a person is or is not an allottee shall not be deemed to raise a question of title within the meaning of this clause.

(3) The District Judge shall determine the question referred to him under clause (b) of sub-section (2) in the manner prescribed and his decision thereon shall be final.

**Appeal to the Collector** 248I Notwithstanding anything contained in any law, any person aggrieved by the order of the Compensation Officer dealing with the objections as so far as it relates to the amounts of compensation under section 248E, may appeal to the Collector who shall decide the appeal in the manner prescribed and the decision of the Collector shall be final.

**Final statement of the auditor** [28] (2) Where an objection has been made in regard to the compensation statement submitted by the auditor, the Compensation Officer shall, in consultation with the Controller, make a final statement of account and shall, in relation to such objections, be final and shall have taken finality disposal of the statement shall, where necessary be amended, altered or modified. The Compensation Officer shall sign the statement and affix his seal thereto.

(3) The statement so signed and sealed shall become final.

(4) A copy of the final statement shall be supplied free of charge to the land holder concerned.

**Form of statement** [29] (1) Except as provided in rule 10 of the Compensation Rules, (2) the Compensation statement in the final compensation statement referred to in section 28 (1) shall be paid in such as not being one or in actual discharge:-

(a) not exceeding ten pence referred to in sub-sections (1) and (2) of section 29 (1) and

(b) not exceeding five pence referred to in sub-sections (1) and (4) of section 29 (1) as may be provided.

Provided however that where compensation is payable to be paid in instalments there shall be paid over and above the amount of compensation a sum equal to ten and one-quarter per cent thereof.

(2) The Compensation shall be paid to the land holder where some is referred to the final compensation statement and where the land holder does object it is paid to him or shall be paid to his legal representatives.

(3) The compensation and rehabilitation grant payable in pursuance of clause (1) of sub-section (1) of section 29 (1) shall be paid in accordance with the provisions of Chapter IV and V.

**Provisions of Chapter IV to apply to compensation claims** [30] Nothing contained in this chapter shall apply to claims properly.

**Rules made by the Government** [31] (1) The State Government may make the rules for the purpose of carrying into effect the provisions of this chapter.

(2) Nothing contained in the provisions of the foregoing part of this rule may provide for:-

(a) the method of calculating costs and other items mentioned in clauses (1) and (2) of section 29 (1),

(b) the disposal of sums and proceedings arising under this Chapter.



- (c) the form and the manner in which the complaint can statement under section 240-L shall be prepared
- (d) the manner in which the Commissioner Officer shall enter the objections to competency Court or the Quarter Judge under section 240-41
- (e) the principles to be followed in determining the pecuniary value in cases where such value has not already determined.
- (f) the cases within which applications may be presented under this Act in cases in which no specific provision in this behalf has been made herein
- (g) the applications of the provisions of the Indian Limitation Act 1908 in applications and proceedings under this Act
- (h) the fees to be paid in respect of applications under this Act in cases in which no specific provision in this behalf has been made herein
- (i) the forms of any orders or judgments bearing final decision under this Act the procedure to be followed by such officer or authority
- (j) the transfer of proceedings from one officer or officer to another officer or authority
- (k) the procedure to be followed in applications and other proceedings under this Act in cases in which no specific provision has been made herein and
- (l) the matters which are to be or may be presented.

56. In section 215 of the Principal Act—

(a) in sub-section (1)—

(1) in clause (c) for the words "and after the month date of voting" shall be substituted

(2) the sentence at the end of clause (c) shall be reworded as and be read as follows in clause (c) and

(3) after clause (a) the following shall be added as a new clause (ay)

(ay) where he believes a order under section 240-B in amount which shall be equal to the rate per able or deemed to be payable by him on the day immediately preceding the appointed day

(4) after sub-section (2) the following shall be inserted as new sub-section (3)—

(3) where the land revenue payable by a order under clause (ay) and (ay) of sub-section (1) exceeds the amount computed as double the introductory rate applicable the Assistant Collector exchange of the

land therein may as her own margin and shall on the application of the holder make abstracts of land therein as an acreage or compared.

27. In section 285 of the Principal Act—

(1) after the figure 184 the words, has subject to the proviso in clause (4) of subsection (1) of the said section shall be inserted; and

Amendment of  
Section 285  
of the  
Act

(2) at the end the following shall be added in a proviso—

Provided that the Gallatin may at any time submit the land in which the river was situated was such as has not been estimated for a period exceeding three years continuously immediately before the date of submission there having regard to the nature and class of land that the land owner could thereby during a period not exceeding three years from the date of voting by or such reduced amount, whether on a graduated scale or otherwise, as he may fit.

28. In section 285A of the Principal Act, for the words now appearing between the words, and, and, and, the word land, shall be substituted—

Amendment of  
Section 285A  
of the  
Act

29. After subsection (2) of section 285 of the Principal Act, the following shall be added as subsection (3)—

Amendment of  
Section 285  
of the  
Act

(3) The land Commission may likewise remit or accept for any period the rent payable by an owner in a given farm;

30. In subsection (2) of section 284 of the Principal Act, after clause (4) the following shall be added in a new clause (5)—

Amendment of  
Section 284  
of the  
Act

(4) the principles to be followed for determination of land revenue under the proviso in Section 285

31. (1) The existing section 285 of the Principal Act shall be renumbered as subsection (1) of section 285

Amendment of  
Section 285  
of the  
Act

(2) In subsection (2) of section 285 as renumbered, for the words, on such principles the words, as may be determined at conference with subsection (3) shall be substituted; and

(3) after subsection (1) as renumbered, the following shall be added in a new subsection (2)—

(2) The amount of compensation in case of disturbance shall be thirty five times of the valuation as here duty free or average rates the land revenue payable by them whichever is greater and in case of order from rates of such valuation plus such compensation for improvements and more as may be agreed upon by the applicant and concerned all the terms and in the case of disagreement as fixed by the Gallatin

Provided that where the land revenue paid by the tenant after or under is less than the valuation at lease, there may on application of an amount equal to it (less the difference between the valuation and the land revenue in case of leasehold) and it shall such difference in the case of profits shall be made to the compensation.

Amendment of  
section 234 of  
U. P. Act I of  
1949

42. In subsection (3) of section 234 of the Principal Act for the word "any" occurring between the words "by and" insert the word "shall" shall be substituted.

Insertion of a  
provision 234A

43. After section 234 of the Principal Act the following shall be and be deemed to have been inserted in and with effect from the commencement of the Uttar Pradesh Land Revenue (Amendment) Bill 1954 as follows:

234A. Where in any suit or proceeding relating to land under the Act or under any other law for the time being in force a question is raised whether a person is or is not an allottee or owner of any land it shall not be deemed to raise a question of title.

234A. Where in any suit or proceeding relating to land under the Act or under any other law for the time being in force a question is raised whether a person is or is not an allottee or owner of any land it shall not be deemed to raise a question of title.

234B. Where a  
question is raised  
under section 234A  
of U. P. Act I of  
1949

44. If the section 234A as hereinafter inserted, the following shall be added as a new section 234B in the Principal Act:-

Provision when  
the question is  
raised under  
section 234A of  
the Act

234B. (1) If in any suit relating to land commenced after the commencement of the U. P. Land Revenue (Amendment) Act 1954 in a civil court or a court not below the civil court, the question is raised whether the land in question is or is not already been passed the question is or is raised whether any party to the suit is an allottee or owner of the land and such question has not previously been determined by a court of competent jurisdiction the Civil Court shall frame an issue on the question and refer the same to the Collector for the opinion of that court only.

Explanation-A plea of being an allottee or owner which is clearly untenable and rejected only in view of the jurisdiction of the Civil Court shall not be deemed to raise a question as stated.

(2) The Collector after receiving the note of enquiry shall decide such case only and return the record together with his finding thereon to the Civil Court which referred it.

(3) The Collector may instead of deciding the case himself transfer it to a competent subordinate revenue officer which shall after receiving the note of enquiry decide it and return the record with its finding thereon through the Collector to the Civil Court.

(f) The Civil Court shall then proceed to decide the case accepting the finding of the Collector or the subordinate revenue officer on the most solid of the facts.

(g) The finding of the Collector or subordinate revenue officer on the issues referred to it shall, for the purposes of appeal, be deemed to be part of the finding of the Civil Court.

55. For the existing system III of the Principal Act, the following shall be substituted:

Amendment of  
section 55  
of 1958.

(a) For the purposes of computing the area fixed under any of the provisions of the Act, it shall mean as follows:—

(i) Barabhangra;

(ii) Transjuncture portions of the Alahabad District Agency and Gwalior District;

(iii) The portions of the Marquis District south of Kanpur Range;

(iv) Tappa Dismouth and Tappa Chauran (Roha Pahari) of the District south of Kanpur Range;

(v) Portions of the Bahadurganj district Marquis which lies south of Kanpur Range; and

(vi) Portions Bahadurganj and the villages mentioned in items A and B of Schedule VI in both parts of portions Alahabad and Bahadurganj of the District Marquis.

56. After section 56 of the Principal Act the following shall be added as a new section 56A:

Insertion of a  
new section 56A  
of 1958.

56A. Government  
in the 1958  
Act, by an  
order in the  
name of the  
Minister.

56A. Whereby making provision in or for the State Government or otherwise it shall be made a party to any suit or other civil suit instituted by or against the State Government or local authority under the Act relating to land and other things vested in it under sections 113 or 117A.

57. In subsection (7) of section 59 of the Principal Act—

(a) in clause (a) between the words which and applications the word shall be

Amendment of  
section 59  
of 1958.

(b) in clause (a) between the words of and appeal the word shall be removed and

(c) in clause (2) between the words to and apply between the word shall be removed.

agreement of  
Schedule 1  
of the  
Act.

(4) In Schedule III of the Principal Act—

(a) in the entry at serial no 4 A in column 4 after the words "Assam Collector" the words "Post-Office" shall be added;

(b) after the entry at serial no 11 the following shall be added as new entry at serial no 12 A:

1	2	3	4	5	6
12 A	12A-B	For the purposes of the Act in the term "post-office" meaning the department	Assam Collector or Post-Office	Commissioner	Board

(c) in the entry against serial no 14 in column 4 for the word "Barr" the words "Assam Collector" and the words "in a suit" shall be substituted;

(d) after the entry at serial no 15 the following shall be added as new entry 15 A:

1	2	3	4	5	6
15 A	15A-B	For the purposes of the Act in the term "suit" meaning a suit	Assam Collector or Post-Office	Commissioner	Board

(e) after entry at serial no 18 the following shall be added as new entries at serial nos 18 A and 18 B:

1	2	3	4	5	6
18 A	18A-B	For the purposes of the Act in the term "suit" meaning a suit	Assam Collector or Post-Office	Commissioner	Board
18 B	18B-C	For the purposes of the Act in the term "suit" meaning a suit	Assam Collector or Post-Office	Commissioner	Board

(f) in the entry against serial no 20 in column 4 the words "Barr" and words "(d) and (e)" shall be deleted.

Insertion of  
Schedule 1  
of the  
Act.

(g) After Schedule IV of the Principal Act the following shall be added as new Schedules V and VI:

**SCHEDULE V**  
**(Section 26.8)**

**Amendment of the Act in its application to crown property**

1 Where any land was included as *blocklands* of an estate at the time the estate assigned to Fribourg, such land shall notwithstanding that the estate may not have conveyed subsequently to Fribourg or be deemed for purposes of Chapter II to have been the *blocklands* of the estate on the date subsequently providing the date of vesting.

2 (1) A person who has been deemed to be a tenant in common under section 14 in respect of any land which is crown property shall within one year from the commencement of the *British Columbia Land Relations (Amendment) Act, 1954* pay to the Canadian—

- (a) where he has become a *shareholder* of the land before the said commencement, an amount equal to a tenth the rent of such land determined in accordance with the said section; and
- (b) where he has not become a *shareholder*, an amount equal to 11 times the rent so determined.

(2) The amount paid under subpara. (1) shall be treated by the land boards as the amount of the interest concerned.

(3) Where the person liable to pay the amount under subpara. (1) pays the same within the period allowed therefore, he shall become a *shareholder* of the land liable to pay land revenue equal to one-half of the land revenue payable by him on the date of commencement of the *C. P. Land Relations Act, 1954*.

(4) If the person liable to pay the amount under subpara. (1) fails to pay the amount allowed within the period allowed therefore, he shall within all his rights, title and interest in the land of which he was so deemed to be a *shareholder*, transfer and the provisions of Chapter II of the *Amendatory Statutes and Land Relations Act, 1954* shall not be deemed therein to have had effect in respect of such land as if section 14 had never been enacted.

(5) Where a person has been deemed under section 14 to be a *beneficiary* instead of a *share* only in any land relations on land in subpara. (1), (2) and (3) shall be amended so references to such *share* only.

(6) Any sums already paid in which may hereafter be paid by the person referred to in clause (a) of subpara. (1) for the acquisition of *shareholder* rights under section 14 or under the *C. P. Agricultural Tenants (Compensation of Possibilities) Act, 1944* in respect of the land shall remain as a *credit* of the sums so far as paid by the land boards, owed to the Canadian and the provisions of subpara. (2) shall apply thereto.

3 Where any land in respect of any land in any existing crown property has been granted to the Canadian under or in accordance with the *Administration of Crown Property Act, 1950* the provisions relating to the land shall

provisions and systems contained in the Administration of Estate Property Act 1950 shall have effect in respect of these pay thing in the contrary contained in this Act not withstanding.

4. (1) A person who has become an adfessor under clause (k) of section 10 of any land which is situated property, shall within one year from the commencement of the U. F. Land Revenue (Amendment) Act 1954 pay the Canadian an amount equal to 10 times the rate computed as hereinafter then applicable to the land.

(2) The amount paid under sub para. (1) shall be credited by the Canadian to the amount of the interest concerned.

(3) If the person fails to pay the amount under sub para. (1):-

(a) pays the same within the period allowed thereafter he shall become a proprietor of the land liable to pay land revenue equal to one-third of the rate computed as hereinafter then applicable to the land; or

(b) fails to pay the same within the period allowed thereafter he shall forfeit all his rights, title and interest in the land of which he was an adfessor and the provisions of Chapter II of the U. F. Revenue, Amended and Land Revenue Act, 1950 shall and he deemed always to have had effect in respect of such land as if clause (k) of section 10 had been therein enacted.

(4) Where a person becomes an adfessor under clause (k) of section 10 of a share only in any land, adfessor in land in sub para. (1) and (2) shall be construed as reference to such share only.

5. Any person becoming an owner under sub-section (b) of section 10 of any land being Estate Property shall, not withstanding anything in this Act, be liable to assessment by the Canadian in the same manner and to the same extent as a person holding under a lease from the Canadian and all the provisions of the Administration of Estate Property Act 1950 relating to assessments shall apply to him accordingly.

6. If in respect of any estate land a question arises as to whether any person is a common tenant or is not a tenant under section 10 and 11 or is or is not an adfessor under section 10 such question shall be decided by the Canadian of Estate Property and not by any other court or authority and the decision of the Canadian shall be conclusive subject to the provisions of appeals, review and revision contained in the Administration of Estate Property Act 1950.

7. In the case of holding held jointly by two or more persons not one or more of them who may be adfessor from the Canadian under the Administration of Estate Property Act 1950 may transfer the whole of his or their interest in lands of income or more of the remaining co-tenant/holders

**SCHEDULE VI**  
**(for sections 107)**

**Law A**

**List of villages of pargana Akotia**

1. Jambh	11. Karkapur
2. Pajhar	12. Lohra
3. Bagher	13. Madhupur
4. Barora	14. Mayan
5. Bar	15. Mohanpur
6. Bhairampur	16. Nagpur Haraga
7. Dhawa	17. Pandu
8. Gaurda	18. Sakari
9. Khairata	19. Talai
10. Khair Khampur	

**Law B**

**List of villages of pargana Bhagpur**

1. Bar Bala	10. Naina
2. Jagai Mohal	11. Rampur Barha
3. Jorai Barha	12. Sankhara
4. Khairkhara	13. Surampur
5. Khairkhali	14. Khairkhara
6. Talai	15. Purana
7. Chai Baran	16. Khairkhara
8. Patwari	17. Khairkhara
9. Khairkhara	18. Garkha

75. The U. P. Land Revenue Act 1901 shall so far as applicable to an area in respect of which a notification under section 3 of the U. P. Land Revenue Act 1901 has been issued, stand amended from the date of coming thereof and it is hereby amended to the extent mentioned in column 3 of the Schedule.

Amendment of  
U. P. Act 31 of  
1901

76. In clause (b) of section 3 of the U. P. Land Revenue (Supplementary) Act 1911 after the words and figures "month 15 of 12" the words "or an arbitrary number between 15 and 30" shall be deemed always to have been inserted.

Amendment of  
U. P. Act 31 of  
1911

77. Where any dispute for possession under section 3 of the Specific Relief Act 1923 has been raised on respect of any land before the date of coming into force of the judgment before me under the provisions of the Principal Act, no party may claim or title in the land, he shall nevertheless anything contained in any other law be enacted, to invest possession of the dispute where he claims of such right or title he is entitled to retain possession thereof.

Right to  
possession  
before  
section 3  
of  
the  
Principal  
Act  
1923



Amendments of  
the Act, and  
of the U. S. Act  
of 1904, in  
this act, or in  
the Act of 1904.

22. In sections 18 and 22 of the Principal Act as applicable to Bureau Sites as defined in the Bureau Site Appropriation Act, 1904, for the figures 1894 whenever they occur the figures 1904 shall and be deemed always to have been substituted.

23. (1) All acts of the nature specified in section 21 A, 11 E and B 15 of Schedule B, of the Principal Act enacted before the commencement of this Act, and all such acts pending on the date of the first meeting on the day immediately preceding the said commencement shall be saved and decided by the courts which has for the commencement made in the Principal Act by sections 22 and 24 of this Act, would have had pending, not in law and stood then.

(2) All appeals, reviews and other proceedings in any such case as are referred to in subsection (1) shall nevertheless standing the commencement of the Principal Act be deemed as not in law. They shall be so and be heard and decided by the court in which such appeal, review or proceeding would have been if the said commencement had not been made.

Legal

24. The U. S. Executive, Executive and Local Relations (Amendments) Ordinance 1904, in force, repealed and the provisions of sections 18 and 24 of the U. S. Federal Claims Act, 1904, shall apply as if it had been so repealed by the U. S. Act.

Treasury  
Department

25. (1) The House Government may for the purpose of removing any difficulties particularly as relation to the same case from the provisions of the Principal Act in the provisions of this Act as amended by this Act by order direct that the Principal Act amended as directed shall during the period of twelve months after the commencement of this Act have effect subject to such adaptations, whether by way of modification, addition or omission as it may seem to be necessary and expedient.

(2) Every order made under subsection (1) shall be laid as soon as may be before both Houses of the State Legislature.

SCHEDULE

Appendix to the U. P. LAND REFORM ACT, 1955

[Section 74]

Serial No.	Section	Extent of modifications or amendments
1	26	In sub-section (1) for the words "Panchayat Adalat covering jurisdiction in the village in which the land is situate" the words "Talukdar of the Taluk in which the land is situate" shall be substituted.
2	26	For section 26 the following shall be substituted—  (a) The Talukdar on receiving a report under section 24 or upon the facts coming to him in his knowledge may order direct the Panchayat Adalat to make such enquiry as appears necessary or may himself make such enquiry.  (b) The Panchayat Adalat shall upon the receipt of the Certificate from the Talukdar make enquiries in the manner provided and shall return them with its report to the Talukdar.  (c) Where it appears from the enquiries made under sub-section (b) that—  (a) the succession in matter has taken place and is not disputed the Talukdar shall direct the Annual Report to be returned accordingly or  (b) the succession or transfer is disputed or the matter is a continuation of the provisions of the U. P. Zamindari Abolition and Land Reforms Act, 1955 the Talukdar shall refer the case to the Collector who shall dispose of it after deciding the dispute in accordance with the provisions of section 10.  3 27A (1) For clause (b) of sub-section (1) the following shall be substituted—  (b) (i) in the Commissioner from orders passed by a Collector or an Assistant Collector First Class or Assistant Collector exchange of talukdars.

(a) in the Collector's copy unless passed  
by an Assistant Collector (General)  
Class or Yabukin

(2) + note (a) of subsection (1) shall be deleted

(3) Subsection (3) shall be deleted

213 Section 113 shall be deleted

214 Subsection (2) shall be deleted

215 After clause (3) the following shall be added or  
new clause (3a)-

"(3a) in respect of and under applications made  
under section 15

216 Clause (3) shall be deleted



AFRICAN AGRICULTURAL LANDS (MISCELLANEOUS  
PROVISIONS) ACT 1964<sup>1</sup>

[V. P. Act XXI of 1964]

*(Enacted in English Text of the Southern Rhodesia  
Parliament (Specialist) Act No. 1964)*

En

ACT

to provide for security of tenure and to make other miscellaneous  
provisions relating to agricultural lands in Rhodesia

Whereas it is expedient to provide for security of tenure  
and other miscellaneous provisions relating to agricultural lands  
in Rhodesia,

It is hereby enacted as follows:

1. (1) This Act may be called the Rhodesian Agricultural  
Lands (Miscellaneous Provisions) Act, 1964.

(2) It shall extend to the Rhodesia of Southern Rhodesia and  
the whole of the Rhodesian Dominion except the areas which are  
included in Government Estates or to which the U. P.  
Residential, Agricultural and Land Reform Act, 1960 applies.

(3) It shall come into force at once.

<sup>1</sup>For purposes of Orders and Statutory Orders and Other Provisions  
issued in (Rhodesian) Gazette March 26, 1964.

Passed in 1964 by the Union of Southern Rhodesia Legislature on  
April 22, 1964 and by the Other Rhodesian Legislature Council on  
September 1, 1964.

Received the assent of the Governor on October 20, 1964 under  
article 100 of the Constitution of Rhodesia and was published in the  
Other Rhodesian Gazette (Rhodesian) dated October 20, 1964.

Published in the Other Rhodesian Gazette (Rhodesian) dated  
October 20, 1964.

Printed and  
published  
by the  
Printer

2. In this Act unless there is anything repugnant to the subject or the context—

Reference

- (i) prescribed means prescribed by rules framed under this Act;
- (ii) State Government means the Government of Uttar Pradesh;
- (iii) tenant includes a tenant but does not include a holder of mortgage; and
- (iv) words and expressions used but not defined in this Act shall have the meaning assigned to them in the law relating to land revenue or land tenure applicable in Kumaon.

3. Notwithstanding any law relating to the tenancy or contract in the tenancy—

Section 27  
Tenancy

- (a) no tenant shall be ejected from his holding or any portion thereof nor be put in possession of an order of a competent court; and
- (b) no court shall order eviction of a tenant from his holding or any portion thereof except on one or more of the following grounds namely:—
  - (i) that a decree against him or his predecessor in interest in respect of that holding or portion of any agricultural year, remains unsatisfied for a period exceeding one year from the date of the decree; or
  - (ii) that he has committed an act or omission detrimental to the land included in his holdings or portions with the purpose for which it was let; or
  - (iii) that he has not let his holdings or any part thereof in accordance with the provisions of this Act.

4. When the Court makes an order for the eviction of a tenant or the ground mentioned in clause (b) of sub-section (2) of section 3, it shall further direct that if the decree against the tenant makes three months from the date of the decree or within such further period as the Court may, for reasons to be recorded allow the tenant shall not be evicted except on the ground of such

Order directing  
the tenant to  
satisfy the  
decree

5. Notwithstanding anything in any law no tenant shall take on the whole or any portion of his holding except where the tenant is—

Section 28  
Tenancy

- (i) an unmarried woman or if married has been divorced or separated from her husband or is a widow;
- (ii) a minor whose father is dead;
- (iii) a person possessing land as a mortgagee or as a tenant and is not more than 25 years of age;

(e) a farmer or an abbot

(f) a person incapable of contracting by reason of blindness or other physical infirmity

(g) in the volume, used as an entry of the Office, in (c) undergoing experiments for a year exceeding three months

Provided that in the case of holding held jointly by more persons than one the provisions shall not apply unless all such persons are in the circumstances of the land subject to one or other of the above disabilities

Fixed  
rent

Term

3. (1) If a leasehold disposition is made from the land otherwise than in accordance with the provisions of the law in that behalf the leaseholder shall be presumed to have done so with the intent to convey, or purport to convey, within the meaning of section 641 of the Indian Penal Code

(2) Whenever a person is convicted of an offence of criminal breach of trust in respect of a land, in the possession of a tenant and it appears to the court that the tenant has been dispossessed thereby of the land, it may if it thinks fit, when so acting with intent or at any time within two months from the date of the conviction order the tenant dispossessed to be restored to the possession of the land

(3) The order under sub-section (2) shall not deprive any right or interest in or in any such land which any person may be able to establish as the appropriate owner

(4) An order under this section may be made by any court of appeal, reference or revision

Extinction of  
rent

7. If from the rent payable by a tenant is payable as land is an interest or appropriation of the standing crop or as rent payable with crops sown or partly in one of such ways and partly in another or other of such ways the Assistant Collector may on his own motion, and shall on the application of the person by or to whom the rent is payable, commute the rent in the manner and at times as he prescribes having regard to the nature of the land

Appropriation of  
land for  
public  
purpose

8. (1) Where/hereafter anything contained in the U P Land Revenue Act 1901 or any other law in that behalf the State Government may direct the land revenue be assessed on any assessment made after the law mentioned shall provision in the commencement of this Act and throughout land revenue shall be assessed on such land

(2) The land revenue to be assessed on the said assessment shall bear the same proportion to the land of which it is the assessment and shall be payable by the persons liable to pay the land revenue of the land of which it is the assessment

(3) The provisions of the U P Land Revenue Act, 1901 shall in that behalf be not inconsistent with the provisions of the Act apply for the purpose of assessment of land revenue under such section (3)

*Explanation:*—This section also means the word "excesses" but the meaning assigned to it in clause (2) of section 3 of the *Kanara Land Revenue and Water Laws Act, 1934*.

9. Where land revenue has been assessed on an excesses under section 6 and such excesses is held by a tenant, the tenant shall be liable to pay same for the excesses in the proportion to the rate rate at which rent is payable for the land of which it is the excesses. There is no rent rate

*Provided that* where the rate for the excesses determined in accordance with this section exceeds 125 per cent of the land revenue assessed thereon under section 6 the rate payable shall be the amount of land revenue plus 25 per cent thereof.

*Explanation:*—The purpose of this section the expenses tenant includes a "tenant" and a "rent" under.

10. The Gov. Government may make rules for purposes of carrying into effect the provisions of this Act. There is no rule rule

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# THE LAND ACQUISITION (U. P. AMENDMENT)

ACT, 1984

(U. P. Act No. XXIII of 1984)

[Laid before the U. P. Legislature on ]

As

Am

to amend the Land Acquisition Act 1894 in its application to the Principal for various purposes

and of 1984

Enacted by the Legislature of the U. P. in the year 1984

and of 1984

It is hereby enacted as follows:

Short title and  
commencement

1. (1) This Act may be called the Land Acquisition (U. P. Amendment) Act, 1984

(2) It shall come into force as soon

as possible, and  
it shall apply to the Principal

as it applies to the Principal, the Land Acquisition Act, 1894 (hereinafter referred to as the Principal Act) shall in its application to the Principal be subject to the amendments specified in the schedule

Amendment

2. Notwithstanding anything contained in section 3 of the Principal Act, in respect of any acquisition of land made in pursuance of notification under section 4 of that Act issued prior to the commencement of this Act, there shall be no effect in its application to the Principal

## SCHEDULE

(Section 2)

Amendments to the Land Acquisition Act, 1894

1. In section 3 of the Land Acquisition Act, 1894 (hereinafter referred to as the Principal Act)–

Amendment of  
section 3 of Act  
of 1894

(1) for clause (1) the following shall be substituted–

(1) the acquisition for public purpose includes provision for or in connection with–

(a) various improvements of any land including its clearance

(b) the laying out of village into townships or the material physical development or improvement of existing village into a township

(c) the acquisition of land for agriculture with the welfare of the people and land

(2) after clause (1) the following shall be added as a new clause (1A)–

(B) Land Reforms Commission under the Land Reforms Commission sponsored by the State Government

Amendment of  
section 4 of the  
1946 Act

2. In section 4 of the Principal Act—

(B) In sub-section (1) after the word "Commission" the words "or Collector" shall be added; and

(2) in sub-section (2) after the words "such Commission" the words "or Collector" shall be added.

Amendment of  
section 5 of the  
1946 Act

3. In sub-section (1) of section 5 of the Principal Act the words "thereafter" the words "hereinafter" shall be substituted.

Amendment of  
section 6 of the  
1946 Act

4. In sub-section (2) of section 6 of the Principal Act the following words shall be inserted after the word "made":

and also send a copy of the report to the Land Reforms Commission.

Amendment of  
section 7 of the  
1946 Act

5. After section 7 of the Principal Act the following shall be added as a new section 7A:

7A. (1) The Collector may at any time have an inquiry made by a committee from the date of the award in relation of award a reference has been made under section 18 before the making of such reference consent may demand a preliminary estimate of the actual value of the land referred to on the application of any person interested.

(2) The Collector shall give a receipt to every person who makes an application to the Collector.

(3) Where any person obtains a receipt as here before said to any person as a result of the reference made under section 18 (1) such person shall be liable to refund the award, and if he delays or refuses to pay, the award may be reduced to an amount fixed therein.

Amendment of  
section 17 of the  
1946 Act

6. After sub-section (1) of section 17 of the Principal Act the following shall be inserted as a new sub-section (1A):

(1A) The power to take possession under sub-section (1) may also be exercised in the case of other than a land or arable land, where the land is required for use in connection with various improvements of any land or physical development.

Amendment of  
section 18 of the  
1946 Act

7. In section 18 of the Principal Act the sub-section (2) the following shall be added as new sub-sections (3) and (4):

(3) Without prejudice to the provisions of sub-section (2) the Land Reforms Commission may, where he requires, the amount of compensation allowed by the award under section 18 to be excessive against the Collector then the award be referred to him to the District Government of the amount of compensation.

Explanation—In case of land under Chapter VII the reference under the sub-section may be made by the Land Reforms Commission on the request of the Government on its undertaking to pay all the cost consequent upon such reference.

(1) The important staff are the people on which stage was in the world is taken and shall be made within six months from the date of the report.

5. In section 27 of the Principal Act—

Amendment of  
section 27  
Act 2 of 1954

(1) In clause (b) the following shall be added as a separate clause to the end

“(c) provision—in judging the amount value assigned to the use, where, land is required for or in connection with mining, operations of the land is placed development that should shall be that to the necessary and integrated conditions of the land on the day assigned.

(2) Subsection (2) shall be deleted.

6. In section 28 of the Principal Act the words “or be less than the amount assigned to the District, under section 18” shall be deleted.

Amendment of  
section 28  
Act 2 of 1954

7. The section, section 29 of the Principal Act shall be re-numbered as subsection (1) and the following shall be added as a new subsection (2).

Amendment of  
section 29  
Act 2 of 1954

(2) In case of acquisition of land for a purpose required under the Immovable Regulations Act 1955 subsection (1) shall have effect as if for the words and figures “section 6 to 11 (both inclusive)” the words and figures “sections 6 and 7” had been substituted.



THE U. P. LEGISLATIVE MEMBERS (NATIONAL PLANS-  
BOARD) (PREVENTION OF DISQUALIFICATION) ACT  
1954<sup>a</sup>

(U. P. Act No. XXIII of 1954)

[*Uttar Pradesh English Title of the Uttar Pradesh Panch  
Mansab Sadasya (Rashtrasamithi Sadasya) (Abhivandhan Niyam  
1954) Act, 1954*]

*Act*

*Act*

to enable members of Uttar Pradesh Legislature to take their  
part share in the achievement of aims of National Plan  
Loan Scheme, and also to provide against incurring by  
them by so joining the disqualification under sub-clause  
(a) of clause (1) of article 191 of the Constitution

Whereas the Central Government has introduced a  
scheme for the use of National Savings Certificate for the  
purpose of financing projects for the development of the  
Country

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<sup>a</sup>The Enactment of (Uttar Pradesh Sadasya) *U. P. Sadasya (Rashtrasamithi) Act*,  
November 15, 1954

Passed as Bill by the Uttar Pradesh Legislative Council on September 15, 1954 and  
by the Uttar Pradesh Legislative Assembly on October 15, 1954

Received the assent of the Governor on November 15, 1954 under Article 191 of the  
Constitution of India as being published in the *Uttar Pradesh Gazette Extraordinary* (extra  
November 16) 1954

(Published in the *Uttar Pradesh Gazette Extraordinary* dated November 16, 1954)

Any persons, with a view to enable members of Uttar Pradesh Legislature to take their due share in the achievement of the National objective, it is necessary immediately to provide special meaning to them by enjoining the responsibility under sub clause (a) of clause (1) of article III of the Constitution.

(1) A law to be enacted in the Fifth year of the Republic of India in relation

1. (1) This Act may be called the U. P. Legislature Members (National Flag Law) (Government of Uttar Pradesh) Amendment Bill, 1954.

Short title and commencement

(2) It shall come into force at once.

2. In this Act unless the subject is contrary otherwise

Defined in

(a) Government Service: has the meaning assigned to it in the Indian Services Act, 1925.

(b) National Flag Certificate includes—

(i) 12 years National Service Certificate

(ii) 10 years National Flag Certificate and

(iii) any other service certificate or Governmental industry issued in that behalf by the State Government and

(c) State Government means the Government of Uttar Pradesh.

3. It is hereby declared that a person shall not be and shall be deemed never to have been disqualified for being chosen or and for being a member of the Uttar Pradesh Legislative Assembly or the Uttar Pradesh Legislative Council, for reason that he is agent or holds office like office under the Government of India or the Government of Uttar Pradesh for the purpose of offering sales of or collecting subscription towards National Flag Certificate for such certificate in the Government of India may have issued in that behalf or without such certificate.

Effect of it  
disqualification  
for members of  
of the U.P.  
Legislature

THE U. P. CIVIL LAWS (REFORMS AND AMENDMENT)  
ACT, 1954

(U. P. Act no. XLIV of 1954)

[As reprinted, Bulletin No. 1 of the Uttar Pradesh Civil  
Laws (Reforms, Repeals, Amendment) Committee, 1954]

En

ACT

*in pursuance of rephrasing the Civil Laws*

Whereas it is expedient to reform the Civil Laws and to  
put and to give to stated certain Acts in their application to  
Uttar Pradesh

It is hereby enacted as follows

Enacted in the  
1954th year of the

(1) This Act may be called the Uttar Pradesh Civil Laws  
(Reforms and Amendment) Act, 1954

(2) It shall come into force as soon as may be

\*For manuscript of Draft Act Enacted in the Uttar Pradesh Legislative Assembly  
dated December 1, 1954

Passed in Hindi by the Uttar Pradesh Legislative Assembly on April 24, 1954 and by  
the Uttar Pradesh Legislative Council on September 1, 1954

Revised the draft of the Bill for the Government of India on September 1, 1954 under Article 20 of the  
Constitution of India and was published in the Uttar Pradesh Gazette Extraordinary dated  
November 10, 1954

Printed and Published by the Government of Uttar Pradesh at Lucknow on November 10, 1954

† The assignments specified in column 3 of this table are staff, in their application in Union Funding, because they have not appeared in the previous column as columns 1 and 2 thereof.

1000

Age Group	Percentage of Respondents
18-29	75%
30-39	65%
40-49	60%
50-59	55%
60-69	50%
70-79	45%
80+	40%

1. (c) Any amendment made by the Act shall not affect the validity, availability, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, incurred or assumed or any contract or dealings, of or with any debt, finance, banking, or any partnership already entered, and any pending institution of business. I in the last year to the commencement of the Act shall, without making any amendment herein made continue to be held and shall be held as such Court.

(D) When by reason of any timebar law made on the Indian Limitation Act, 1908, or any other enactment mentioned in column 2 of the Schedule, the period of limitation prescribed for any suit or appeal has been excluded, or a different period of limitation and therefore govern any suit or appeal, then, notwithstanding any amendment to the Act, or the fact that the suit or appeal would now have a different limit, the period so beginning applicable to a suit or appeal, is deemed to apply and has begun to run before the commencement of this Act shall continue to be the period which but for the amendment so made would have been applicable.

1000

Line of no.	Short Title of the Bill	Number of Sponsors of the Bill	Actual Impact
1	2	3	4
1	The Indian Evidence Act (1973) and the 1 of 1973)	10	<p>The hearing request shall be in accordance with the 1973 Act and</p> <p>(a) The hearing request shall be in accordance with the 1973 Act and</p> <p>(b) The hearing request shall be in accordance with the 1973 Act and</p> <p>(c) The hearing request shall be in accordance with the 1973 Act and</p> <p>(d) The hearing request shall be in accordance with the 1973 Act and</p> <p>(e) The hearing request shall be in accordance with the 1973 Act and</p> <p>(f) The hearing request shall be in accordance with the 1973 Act and</p> <p>(g) The hearing request shall be in accordance with the 1973 Act and</p> <p>(h) The hearing request shall be in accordance with the 1973 Act and</p> <p>(i) The hearing request shall be in accordance with the 1973 Act and</p> <p>(j) The hearing request shall be in accordance with the 1973 Act and</p> <p>(k) The hearing request shall be in accordance with the 1973 Act and</p> <p>(l) The hearing request shall be in accordance with the 1973 Act and</p> <p>(m) The hearing request shall be in accordance with the 1973 Act and</p> <p>(n) The hearing request shall be in accordance with the 1973 Act and</p> <p>(o) The hearing request shall be in accordance with the 1973 Act and</p> <p>(p) The hearing request shall be in accordance with the 1973 Act and</p> <p>(q) The hearing request shall be in accordance with the 1973 Act and</p> <p>(r) The hearing request shall be in accordance with the 1973 Act and</p> <p>(s) The hearing request shall be in accordance with the 1973 Act and</p> <p>(t) The hearing request shall be in accordance with the 1973 Act and</p> <p>(u) The hearing request shall be in accordance with the 1973 Act and</p> <p>(v) The hearing request shall be in accordance with the 1973 Act and</p> <p>(w) The hearing request shall be in accordance with the 1973 Act and</p> <p>(x) The hearing request shall be in accordance with the 1973 Act and</p> <p>(y) The hearing request shall be in accordance with the 1973 Act and</p> <p>(z) The hearing request shall be in accordance with the 1973 Act and</p>





[illegible]

[illegible]



THE U. P. NURSES, MIDWIVES, ASSISTANT MIDWIVES  
AND HEALTH VISITORS' REGISTRATION  
(AMENDMENT) ACT, 1954\*

1954—

(U. P. No. 34 of 1954)

[Bills in English Text] of the Uttar Pradesh Nurses, Midwives,  
Assistant Midwives and Health Visitors' Registration  
(Amendment) Bill, 1954]

Act

ACT

U. P. ACT NO. 34 OF 1954. To amend the U. P. Nurses, Midwives, Assistant Midwives and Health Visitors' Registration Act, 1934 for certain purposes.

Enacted as a regulation to amend the U. P. Nurses, Midwives, Assistant Midwives and Health Visitors' Registration Act, 1934 for the purposes mentioned appearing.

It is hereby enacted in the 58th year of our Republic as follows:

Enactment and  
re-enactment:

1. (1) This Act may be called the U. P. Nurses, Midwives, Assistant Midwives and Health Visitors' Registration (Amendment) Act, 1954.

(2) It shall come into force as soon

Amendment of  
section 10 of U. P.  
Act No. 34 of 1934

as it contains 10 of the U. P. Nurses, Midwives, Assistant Midwives and Health Visitors' Registration Act, 1934. For the full stop at the end of the running paragraph section shall be substituted and thereafter the following shall be added as a second paragraph:

Provided further that where a member elected under sub-section (a) or (c) of clause (4) of sub-section

(1) of section (1) comes to be a member of the Uttar Pradesh Legislative Assembly or the Uttar Pradesh Legislative Council, he shall cease to be a member of the Council.

\*For Enactment of Bills and Statutes there is U.P. Gazette (for statutory) dated July 28, 1954.

Enacted at Lucknow by the Uttar Pradesh Legislative Assembly on September 1, 1954 and the Uttar Pradesh Legislative Council on September 11, 1954.

Report of the Council of the President on September 11, 1954 under Article 100 of the Constitution of India and was published in the Uttar Pradesh Gazette (Statutory) dated November 10, 1954.

Enacted in the Uttar Pradesh Gazette (Statutory), dated November 10, 1954.



THE U. P. CONSOLIDATION OF HOLDINGS  
(AMENDMENT) ACT, 1954

[U. P. Act No. 22(XI) of 1954]

[Enacted after English Text of the Uttar Pradesh (for Childrens)  
(Amendment) Bill, 1954]

Act  
ACT

U. P. Act No. 22 of 1954 to amend the U. P. Consolidation of Holdings Act, 1946 for certain purposes

U. P. Act No. 22 of 1954 Whereas it is expedient to amend the U. P. Consolidation of Holdings Act, 1946 for the purposes hereinafter appearing:

It is hereby enacted as follows:

Section 1. (1) This Act may be called the U. P. Consolidation of Holdings (Amendment) Act, 1954.

(2) It shall be called the Uttar Pradesh Consolidation of Holdings (Amendment) Bill, 1954.

(3) It shall be called the Uttar Pradesh Consolidation of Holdings (Amendment) Bill, 1954.

(4) It shall be called the Uttar Pradesh Consolidation of Holdings (Amendment) Bill, 1954.

(5) It shall be called the Uttar Pradesh Consolidation of Holdings (Amendment) Bill, 1954.

(6) It shall be called the Uttar Pradesh Consolidation of Holdings (Amendment) Bill, 1954.

(b) it shall come into force as such.

2. (1) After clause (2) of section 3 of the U. P. Consolidation of Holdings Act, 1946 (hereinafter called the Principal Act) the following shall be added as a new clause (2 1/2) :-

Amendment of  
Section 3 of U. P.  
Consolidation of  
Holdings Act, 1946

(2 1/2) Consolidation Commission means the Land Management Commission constituted under section 11 of the U. P. Land Revenue Abolition and Land Reforms Act, 1956 and includes a sub-committee constituted under Section 43.

(2) For the expression "a clause" in section 1 of the Principal Act the following shall be substituted:-

Explanation:- The clause the expression "holding" shall include a land used or intended to be used for purposes of pasture but does not include a field which is a piece of the part of the village, does not meet the provisions of the Act as to which section 15 of the U. P. Land Revenue Abolition and Land Reforms Act, 1956 applies.

3. In sub-section (2) of section 3 of the Principal Act the words "the words" Settlements Officer (Consolidation) shall be substituted by a full stop and the following words and meanings all the powers conferred on the Collector, Assistant Collector and the Tahsildar under the said Chapter shall in lieu as they derive in the said provisions under consolidation operations be exercised respectively by the Settlements Officer (Consolidation), Consolidation Officer and the Assistant Consolidation Officer, shall be deleted.

Amendment of  
Section 3 of U. P.  
Act No. 1946

4. In section 7 of the Principal Act for the words, by making a field or field parcel of the existing village. He shall also prepare a statement showing the words, by making a parcel in accordance with the provisions as he prescribed. For that the proper or cases to be prepared a statement showing shall be substituted.

Amendment of  
Section 7 of U. P.  
Act No. 1946

5. In section 8 of the Principal Act:-

(a) For the existing sub-section (1) the following shall be substituted:-

Amendment of  
Section 8 of U. P.  
Act No. 1946

(1) Upon commencement of the land revenue is returned, the Assistant Consolidation Officer shall submit a report in the form and manner prescribed to the Settlements Officer (Consolidation) regarding completion of the existing maps and records and the history of any of revision of such maps and records.

(2) In sub-section (2) for the words "provisions contained in Chapter III of the U. P. Land Revenue Act, 1946" substitute the words "Provisions to be prescribed".

(3) In sub-section (3) for the figure "30" the figure "1" shall be substituted.



amendment of  
Section 1 of  
U. S. Act  
of 1936

6. In section 9 of the Principal Act the words "and a copy shall be sent to the Collector" shall be deleted.

amendment of  
Section 10 of  
U. S. Act  
of 1936

7. In section 10 of the Principal Act after the word "and" before Section 11 the words "and containing the matter" shall be inserted.

amendment of new  
Section 10-A and  
of U. S. Act  
of 1936

8. After section 10 of the Principal Act the following shall be added to new sections 10-A and 10-B:

10-A. (1) Subject to such restrictions as may be prescribed in the rules made under section 4, no person shall be permitted to erect or alter a structure or building on any land after the publication of the map, unless under section 4, but before publication of the Annual Reports under section 5 or of the map under section 10, in the case may be, apply to the Commissioner of the Land Revenue, then in charge of the land, for a permit to erect or alter the building or structure.

(2) Whenever an application is made by any person under sub-section (1) the Commissioner shall not oblige anything to be done under 179 of the U. S. Commission Act, 1936, unless the person is to be permitted to erect or alter a building or structure on any land after the publication of the map, unless under section 4, but before publication of the Annual Reports under section 5 or of the map under section 10, in the case may be, apply to the Commissioner of the Land Revenue, then in charge of the land, for a permit to erect or alter the building or structure.

10-B. It shall be lawful for any person to erect or alter a building or structure on any land after the publication of the map, unless under section 4, but before publication of the Annual Reports under section 5 or of the map under section 10, in the case may be, apply to the Commissioner of the Land Revenue, then in charge of the land, for a permit to erect or alter the building or structure.

amendment of  
Section 11 of  
U. S. Act  
of 1936

9. (1) In sub-section (1) of section 11 of the Principal Act after the words "properly" add a comma and insert the words "or cause to be prepared".

(2) In sub-section (2) of section 11 of the Principal Act the words "whenever necessary" shall be deleted before the words "the revenue".

amendment of  
Section 12 of  
U. S. Act  
of 1936

10. In section 12 of the Principal Act:-

(1) in sub-section (1) between the words "thereafter" and "and so the words" in the Civil Judge having jurisdiction who shall thereafter refer to shall be inserted "and".

(2) for the existing sub-section (2) the following shall be substituted:-

(2) Upon the making of reference under sub-section (1) all suits or proceedings in the Court of first instance appealable or reviewable in which the question of title or interest in the same land has been raised, shall be stayed.

10. In subsection (1) of section 11 of the Principal Act as Chapter (v) the word "and" as the word shall be deleted and inserted the following shall be added in a new clause (12):

Amended  
Section 11  
of  
1964  
No. 1

(12) the land on which the sewage holder will cause to be constructed and completed the progress of some main works and the layout in which such land may be divided into a series of small plots and

11. For section 12 of the Principal Act the following shall be substituted:

Amended  
Section 12  
of  
1964  
No. 1

12. (1) The Assistant Commissioner of Police shall, in exercising his powers in the exercise of his powers of principle—

- (a) the land on which sewage is to be disposed and progress in disposal thereof, which will not exceed three or more than three, with the permission of the Director of Land Revenue and will be the maximum plot taking into account the following factors:
  - (i) the land and number of plots given to the village;
  - (ii) the quality of soil;
  - (iii) the facilities or absence of organized facilities; and
  - (iv) the presence of land subject to fiscal control of the State.
- (2) it be as possible with these sewage holder shall get land in any particular block when already held land therein.
- (3) the number of plots to be allotted in each sewage holder existing town, township, the state and those reserved for public purposes shall not exceed the number of blocks in the village.
- (4) the sewage holder belonging to the same family shall as far as possible be given neighbouring plots.
- (5) the location of the residential house of the sewage holder or representative of any family by him shall as far as possible be taken into account in allotting plots.
- (6) small sewage holder shall as far as possible be given land near the village.
- (7) no existing sewage holding or farm which is of more or more than one shall not as far as possible be be dismantled or divided.
- (8) every sewage holder as far as possible shall and hold in the block where he holds the largest part of the holding.

(c) the allotment of plain study cases (A) shall be made on the basis of merit value obtained.

Provided that the area of the plain proposed to be allotted shall not differ in any case except with the permission of the Director Director of Consolidation by more than 10 per cent from the area of the original plot.

(2) The Assistant Commissioner Officer shall also have regard to such other principles as may be prescribed or specified in the Consolidation Regulations and act not inconsistent with the provisions of this Act and the Rules.

15 In sub-section (2) of section 12 of the Principal Act for the word "shall" the word "may" shall be substituted.

16 In section 22 of the Principal Act--

(1) between the words "department" and "and to the words" in the word "Judge having jurisdiction who shall thereupon refer a case" shall be inserted "and

(2) in clause (b) of section 12 the following shall be substituted:

(2) Upon the making of reference under sub-section (1) all suits or proceedings in the Court of first instance appeal reference or remand in which the question of title in relation to the same land has been raised shall be stayed.

17 In section 16 of the Principal Act for the words "the last day of May next following the month a date to be fixed by the Director of Consolidation subsequent to" shall be substituted "and

18 In section 16 of the Principal Act--

(1) in sub-section (1) between the words "department" and "to the words" in the word "Judge having jurisdiction who shall thereupon refer a case" shall be inserted "and

(2) in sub-section (2) the following shall be substituted:

(2) Upon making a reference under sub-section (1) all suits and proceedings in the Court of first instance appeal reference or remand in which the question of title in relation to same land has been raised shall be stayed.

19 In section 42 of the Principal Act after sub-section (1) the following shall be inserted as a new sub-section (2):

(2) The State Government may by notification in the official Gazette empower the Assistant Director of Consolidation or designate all or each of the members of the Director of Consolidation or who he specified in the notification and thereupon all references to the Director of Consolidation in that Act shall in respect of the functions so specified will be deemed as include reference to the Assistant Director of Consolidation also.

Approved on 17/11/54  
by the  
Secretary to the Government  
of Madras  
11/11/54

Approved on 23/11/54  
by the  
Secretary to the Government  
of Madras  
23/11/54

Approved on 11/12/54  
by the  
Secretary to the Government  
of Madras  
11/12/54

Approved on 11/12/54  
by the  
Secretary to the Government  
of Madras  
11/12/54

[illegible]

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**

**Abstract**

(g) between the words "in numbers" and "Fig. 1" read "large numbers" and "a" read "several";

(4) In the work, Total Management Committee occurring in the last quarter the work, French design Committee shall be celebrated.

(2) 2000-2001 season (2) the following shall be added to sub-section (2) as

(1) Whether a day later the 1998 Convention is valid, and that the 4-nation draft 4-nation treaty is intended to fulfil another, separate, need or require to discharge the duty to protect the, from, more exposed or exposed to or under the, but, or governments have in action, the 4-nation has been considered viable to discharge, the, duties to protect the, however, showed up as a subject, was exposed or necessary, to do so, it is, the, under the, in the official, the, under, is, cannot, for the purpose of the, but, the 4-nation Convention is accordance with the, providing, of, substance (1) and (2) in regard, some, which, authority to enforce, the, however, in, (1) and (2) of the Convention, the, under the, Act, and, however, all, reference to, the, (1) and (2) Convention, under the, Act, shall be, the, in, under, to, under, to, the, 4-nation Convention, the, under, is, contained in, the, authority, to, contained, in, the, and, to, to,

10. Also remove all of the Pretype 3 Test the following shall be stored as a new version 10.4.

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

834 (1) Notwithstanding anything contained in the  
Bribe Payments Act, 1947, any person who has  
received any bribe payment of the nature

(4) no deposit of the Certificate of Economic Property to the Registrar on the actions referred to in the preceding paragraph, in order to not lose total control as him as tenant property under the provisions of the Administration, of Economic Property Act 1950 shall be called as plaintiff and verified or received by any office or authority in order the law and

(2) nothing in this Act shall be construed as requiring the Commission to give any personship in relation to title to any such land, pending before him on the date of the coming into force of these provisions of this Act under which proceedings in relation to title to land are required to be made or in disposing the land.

Officer in any other office or authority in relation to the administration of any question of title in relation to such land involved in any proceedings pending before the Commission on such date.

(b) Where there is a conflict of consolidation operations in any village:

(i) lands which are vested in revenue property in the Commission under the provisions of the Administration of Revenue Property Act 1958 are included as holdings which are not vested in the Commission as revenue property; such lands shall not and from the date of the coming into force of the consolidation scheme cease to be so vested in the Commission and the provisions of the said Act shall therefore cease to apply in relation thereto; and

(ii) in lieu of such lands corresponding lands shall be included as holdings which are vested in the Commission as revenue property; and such lands shall not and from the date of the coming into force of the consolidation scheme be deemed to be revenue property declared as such within the meaning of the abovesaid Act and be vested in the Commission and the provisions of the said Act shall therefore apply in full as may be in relation to such lands.

Enactment of the  
act 12 of 1974  
Act V of 1974

10 Section 10 of the Principal Act shall be deleted

Amendment of  
Section 10 of  
the P. Act by  
1974

11 In sub-section (1) of section 10 of the Principal Act for the existing clause (c) the following shall be substituted:

(c) appointment of arbitrator

(d) the procedure for transmission of the question of title to the Civil Judge and of reference by the Civil Judge to Arbitrator under sections 11, 12 and 14 and the review of the Arbitrator's decision by the Civil Judge to the Consolidation Officer

Section 10 of  
the Principal  
Act shall be  
deleted

12 In sections 11, 12 and 14 and sub-section (1) of section 15 and clause (c) of sub-section (2) of section 16 for the words "Consolidation Commission" shall be substituted



THE AGRA UNIVERSITY (AMENDMENT) ACT, 1954

[P. P. No. XXXII of 1954]

(Enacts the English Text of the above University Amendment Bill passed in December, 1953)

En

Act

U. P. Act No. 187 of 1954. Section 1. To amend the Agra University Act, 1924.

U. P. Act No. 187 of 1954. Section 1. Whereas it is expedient to amend the Agra University Act, 1924 for the purposes hereinafter appearing:

It is hereby enacted as follows by the Uttar Pradesh Legislature in the 15th year of the Republic of India:

Section 1. (1) This Act may be called the Agra University (Amendment) Act, 1954.

(2) It shall come into force at once.

Section 2. In this provision or subsection (2) of section 21 of the Agra University Act, 1924 (hereinafter referred to as the Principal Act) after the figure, 1954/55, the words, or of the State Government or district before the expiry of each subsequent academic year as it may be substituted in the said Gazette specification from year to year, shall be inserted.

Section 3. In section 18A of the Principal Act—

(1) in clause (b) for the words, one year, the words, eighteen months, shall be substituted;

(2) in the proviso for the words, 12 months, the words, eighteen months, shall be substituted.

(The Enactment of the above Bill was published in the Official Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), on the 26th December, 1954.)

Enacted by the Uttar Pradesh Legislative Council on December 26, 1954, and by the Uttar Pradesh Legislative Assembly on December 26, 1954.

Received the assent of the Governor on December 26, 1954, under Act No. 187 of the Constitution of India, and promulgated in the Uttar Pradesh Government Gazette, Extraordinary, dated December 26, 1954.

Published in the Uttar Pradesh Gazette, Extraordinary, dated December 26, 1954.





LUCKNOW UNIVERSITY (AMENDMENT) ORDINANCE  
1954

(L.U. No. 111 of 1954)

Enacted in Accordance with the Powers—of the  
Provisional Committee of 1954 under Section 43 (1) of the  
Constitution of India, and published in the U. P. Gazette  
Extraordinary dated December 30, 1954:

AS

Ordinance

Enacted by the Lucknow University Act, 1950, for certain purposes

Enacted the Governor is satisfied that circumstances  
exist which render it necessary immediately to amend the  
Lucknow University Act, 1950, for certain purposes

and whereas the U. P. Legislature is not in session,

Enacted, in exercise of the powers conferred by  
clause (1) of Article 213 of the Constitution of India, the  
Governor is pleased to make and promulgate the following  
Ordinance:—

Short title and  
Commencement

1. (1) This Ordinance may be called the Lucknow Uni-  
versity (Amendment) Ordinance, 1954.

(2) It shall come into force at once.

Amendment of  
section 10 of  
U. P. Act No. 11  
of 1950

2. In section 10 of the Lucknow University Act, 1950  
which subsection (1) the following shall be added as a new sub-  
section (2):—

“(2) When a vacancy other than a temporary vacancy  
arising in or under section (1) occurs in the office  
of Vice-Chancellor and the Chancellor is satisfied  
that it is necessary to make immediate arrangements  
for carrying on the office he may appoint  
a Vice-Chancellor for such term not exceeding six  
months as the Chancellor may be anything in such  
section (1) not inconsistent.”



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